21-1920-cr

United States Court of Appeals

for the

Second Circuit

UNITED STATES OF AMERICA,

Appellee,

– v. –

ARI TEMAN, AKA Sealed Defendant 1,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX
Volume 7 of 11 (Pages A-1201 to A-1440)

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testimony.

In other words, what you must try to do in deciding credibility is to size a witness up in light of his or her demeanor, the explanations given, and all of the other evidence in the case. You should use your common sense, your good judgment, and your everyday experiences in life to make your credibility determinations.

In passing upon the credibility of a witness, you may also take into account any inconsistencies or contradictions as to material matters in his or her testimony.

If you find that any witness has willfully testified falsely as to any material fact, you have the right to reject the testimony of that witness in its entirety. On the other hand, even if you find that a witness has testified falsely about one matter, you may reject as false that portion of his or her testimony and accept as true any other portion of the testimony which commends itself to your belief or which you may find corroborated by other evidence in the case. A witness may be inaccurate, contradictory, or even untruthful in some aspects, and yet be truthful and entirely credible in other aspects of his or her testimony.

The ultimate question for you to decide in passing upon credibility is: Did the witness tell the truth before you? It is for you to say whether his or her testimony at this trial is truthful in whole or in part.

Now a discussion of witness bias. In deciding whether to believe a witness, you should specifically note any evidence of hostility or affection that the witness may have towards one of the parties. Likewise, you should consider evidence of any interest or motive that the witness may have in cooperating with a particular party. You should also take into account any evidence of any benefit that a witness may receive from the outcome of the case.

It is your duty to consider whether the witness has permitted any such bias or interest to color his or her testimony. In short, if you find that a witness is biased, you should view his or her testimony with caution, weigh it with care, and subject it to close and searching scrutiny.

Of course, the mere fact that a witness is interested in the outcome of the case does not mean that he or she has not told the truth. It is for you to decide from your observations and applying your common sense and experience and all of the other considerations mentioned whether the possible interest of any witness has intentionally or otherwise colored or distorted his or her testimony. You are not required to disbelieve an interested witness; you may accept as much of his or her testimony as you deem reliable and reject as much as you deem unworthy of acceptance.

You've heard evidence that, at some earlier time, witnesses have said or done something that counsel argues is

inconsistent with their trial testimony.

Evidence of a prior inconsistent statement was placed before you not because it is itself evidence of the guilt or innocence of the defendant, but only for the purpose of helping you decide whether to believe the trial testimony of a witness who may have contradicted a prior statement. If you find that the witness made an earlier statement that conflicts with the witness's trial testimony, you may consider that fact in deciding how much of the witness's trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency; and whether that explanation appealed to your common sense.

It is exclusively your duty, based upon all the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and if so, how much, if any, weight to give to the inconsistent statement in determining whether to believe all or part of the witness's testimony.

You have heard evidence that certain witnesses made earlier statements that were consistent with their trial testimony. Such statements were admitted into evidence not as independent evidence of guilt or innocence, but solely for

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whatever light they may shed on the witness's credibility. If you find that a witness had a motive to testify as he did, but also that he told the same story before he had that motive, you may take that into account in deciding whether the witness's interest or motive colored his testimony.

Now a word about the witness preparation. You heard evidence during the trial that witnesses discussed the facts of this case with the lawyers before the witnesses appeared in court. Although you may consider that fact when you are evaluating a witness's credibility, I should tell you that there is nothing either unusual or improper about a witness meeting with lawyers before testifying so that the witness can be made aware of the subjects that he or she will be questioned about, focus on those subjects, and have the opportunity to review relevant exhibits before being questioned about them.

(Continued on next page)

THE COURT: In fact, it would be unusual for a lawyer to call a witness without such consultation. Again, the weight that you should give to the fact or the nature of the witness's preparation for his or her testimony and what inferences you should draw from such preparation are matters completely within your discretion.

In this case, you've heard evidence in the form of stipulations of fact. A stipulation of fact is an agreement between the parties that a certain fact is true. You must regard such agreed-upon facts as true; however, it's for you to determine the effect to be given to those facts.

Various bank records and other electronic communications, such as emails, have been admitted into evidence. I instruct you that this evidence was all obtained in a lawful manner, and that no one's rights were violated, and that a party's use of this evidence is entirely lawful.

Therefore, regardless of any personal opinions you might have regarding the obtaining of such evidence, you must give such evidence full consideration, along with any -- excuse me, along with all the other evidence in this case in determining whether the government has proved the defendant's guilt beyond a reasonable doubt. What significance you attach to this evidence is entirely your decision.

During the trial, you've heard testimony of witnesses bearing on the investigative techniques used in this case. You

may consider these facts in deciding whether the government has met its burden of proof because, as I told you, you should look to all of the evidence -- or lack of evidence -- in deciding whether the defendant is guilty. However, you are also instructed that there is no legal requirement that the government use any of these specific investigative techniques to prove its case. Whether you approve or disapprove of various law enforcement techniques, or whether you might have chosen to use or not use any particular technique is not the question. Your concern, as I've said, is to determine whether or not, on the evidence or lack of evidence, the defendant's guilt has been proved beyond a reasonable doubt.

Both the government and the defendant have the same power to subpoena witnesses to testify on their behalf. If a potential witness could have been called by the government or by the defendant, and neither called the witness, then you may draw the conclusion that the testimony of the absent witness might have been unfavorable to the government or to the defendant or to both.

On the other hand, it's equally within your province to draw no inference at all from the failure of either side to call a witness. You should remember that there is no duty on either side to call a witness whose testimony would be merely cumulative of testimony already in evidence or who would merely provide additional testimony to facts already in evidence. You

should, however, remember my instruction that the law does not impose on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

The defendant, Ari Teman, did not testify in this case. Under our Constitution, a defendant has no obligation to testify or to present any evidence because it's the government's burden to prove the defendant guilty beyond a reasonable doubt. That burden remains with the government throughout the entire trial and never shifts to the defendant. A defendant is never required to prove that he is innocent.

You may not attach any significance to the fact that Mr. Teman did not testify. No adverse inference against him may be drawn by you because he did not take the witness stand. You may not consider this against him in any way in your deliberations.

Now, ladies and gentlemen, I'm about to turn to part 2. That concludes part 1, instructions that would apply in just about any case.

I'm going to stretch my legs, I invite you to do the same, because we are about to dig into the instructions that are specific to this case.

(Pause)

THE COURT: All right. I will turn now to my instructions to you relating to the charges brought against the defendant in this case.

The defendant is formally charged in an indictment. As I instructed you at the outset of this case, an indictment is merely a charge or accusation. It is not evidence and it does not prove or even indicate guilt. As a result, you are not to give it any weight in deciding the defendant's guilt or lack of guilt. What matters is the evidence you heard at this trial. Indeed, as I previously noted, the defendant is presumed innocent, and it is the prosecution's burden to prove the defendant's guilt beyond a reasonable doubt.

The indictment contains four counts. Each count is a separate offense or crime. Each count must, therefore, be considered separately by you, and you must return a separate verdict on each count.

Counts One and Two of the indictment charge the defendant with committing the offense of bank fraud. Count One charges him with a bank fraud scheme committed between in or about April 2019, up to and including in or about June 2019. Count Two charges him with a bank fraud scheme committed in or about March 2019.

Similarly, Count Three and Four charge the defendant with two separate instances of wire fraud. Count Three charges him with a wire fraud scheme committed between in or about April 2019, up to and including in or about June 2019. Count Four charges him with committing a wire fraud scheme in or about March 2019.

I'm now going to instruct you on the applicable law for each of the four counts.

So let's begin with bank fraud.

As I said, Counts One and Two both charge the defendant with bank fraud, in violation of a statute known as Title 18, United States Code, Section 1344. In other words, each count charges that the defendant devised a scheme to defraud a federally insured bank.

Count One charges the defendant with committing a bank fraud scheme in connection with the deposit in April 2019 of 27 checks, allegedly by creating, and then making the false pretense and representation to the bank that he had the account holders' authority to deposit these checks.

Count One of the indictment reads, and I'm quoting now: "From at least in or about April 2019, up to and including at least in or about June 2019, in the Southern District of New York and elsewhere, Ari Teman, the defendant, willfully and knowingly did execute and attempt to execute a scheme and artifice to defraud a financial institution, the deposits of which were then insured by the Federal Deposit Insurance Corporation; and to obtain monies, funds, credits, assets, securities and other property owned by and under the custody and control of such financial institution by means of false and fraudulent pretenses, representations, and promises, to wit, Teman deposited counterfeit checks in the name of three

third parties, respectively Entity 1, Entity 2, and Entity 3, into an account held at a particular financial institution, Financial Institution 1, and subsequently attempted to and did use those funds for his personal benefit."

That ends that quote. That's the quote of Count One.

Count Two charges the defendant with committing a bank fraud scheme in connection with a deposit in March 2019 of two checks, again, allegedly by creating, and then making the false pretense and representation to the bank that he had the account holders' authority to deposit, those checks.

Count Two of the indictment reads, and I'm quoting: "In or about March 2019, in the Southern District of New York and elsewhere, Ari Teman, the defendant, willfully and knowingly did execute and attempt to execute a scheme and artifice to defraud a financial institution, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and to obtain monies, funds, credits, assets, securities, and other property owned by and under the custody and control of such financial institution by means of false and fraudulent pretenses, representations, and promises, to wit, Teman deposited counterfeit checks in the name of Entity 3 and another third party, Entity 4, into an account held at Financial Institution 1, and subsequently attempted to aid -- attempted to and did use those funds for his personal benefit."

I instruct you that in connection with this

indictment, Entity 1 refers to ABJ Milano LLC, operated by ABJ Properties; Entity 2 refers to ABJ Lenox LLC, operated by ABJ Properties; Entity 3 refers to 518 West 204 LLC, operated by Coney Realty; Entity 4 refers to 18 Mercer Equity, Inc., operated by Crystal Real Estate Management; and Financial Institution 1 refers to Bank of America.

To find the defendant guilty of the crimes charged in Counts One and Two of the indictment, the government must establish each of the following elements beyond a reasonable doubt, and there are three:

First, that there was a scheme or artifice to defraud a bank, as alleged in the indictment, or that there was a scheme or artifice to obtain money or other property owned by a financial institution by means of materially false or fraudulent pretenses, representations, or promises, as alleged in the indictment.

Second, that the defendant knowingly and willfully executed or attempted to execute the scheme or artifice; that is, that the defendant acted with knowledge of the fraudulent nature of the scheme, and with the specific intent to defraud the bank or to obtain, by deceiving the bank, money or other property owned or controlled by the bank.

And third, that the deposits of the bank involved were, at the time of the scheme, insured by the Federal Deposit Insurance Corporation.

Now I will explain each of the three elements of bank fraud in more detail.

The first element that the government must prove beyond a reasonable doubt is that on or about the dates set forth in the indictment, (1) there was a scheme or artifice to defraud a bank; or, (2) there was a scheme or artifice to obtain money or other property owned by or under the custody or control of such a bank by means of false or fraudulent pretenses, representation, or promises that were material to the scheme.

The government must prove the existence of only one of these schemes. These two concepts are not necessarily mutually exclusive. If you find that either one type of scheme or artifice or both existed, then the first element of bank fraud is satisfied. However, you must be unanimous in your view as to at least one type of scheme or artifice that existed. If half of you think (1), but not (2); and the other half think (2), but not (1), then you must vote to acquit the defendant.

I'll now explain what these terms mean, and I'll begin with the key terms from (1), which, again requires the government to prove beyond a reasonable doubt that there was a scheme or artifice to defraud a bank.

A "scheme or artifice" is a plan, a device, or course of conduct to accomplish an objective. "Fraud" is a general term. It is a term that includes all the possible means by

which a person seeks to gain some unfair advantage over another person by false representations, false suggestions, false pretenses, or concealment of the truth. The unfair advantage sought can involve money, property, or anything of value.

And thus, a scheme to defraud a bank is a pattern or course of conduct concerning a material matter designed to deceive a federally insured bank into releasing money or property with the intent to cause the bank to suffer an actual or potential loss. This term "scheme to defraud" thus embraces all dishonest means, however ingenious, clever, or crafty, by which a person seeks to trick another out of their property. For example, a scheme to defraud may be accomplished through trickery, deceit, deception, or swindle.

The government does not need to show that the defendant's conduct actually caused the bank to release money or property, but rather only needs to show that the defendant's conduct was designed to deceive the bank into releasing money or property.

This defines a scheme or artifice to defraud a bank, the first type of scheme prohibited by the federal bank fraud statute. You may find that a scheme to defraud existed only if the government has proven beyond a reasonable doubt the existence of the scheme alleged in the indictment, which I read to you a few moments ago.

Now, the second type of scheme charged, described at

the beginning of this section as (2), is a scheme to obtain money or other property owned by or under the custody and control of a bank by means of false or fraudulent pretenses, representations, or promises. As to this type of scheme, the government must show that false and fraudulent pretenses, representations, or promises were employed, and that they were directed at the bank with the intention of deceiving it.

And this brings me to false or fraudulent pretenses, representations, or promises.

A representation is fraudulent if it was made falsely with the intent to deceive. The deceptive means that are prohibited are not limited to active misrepresentations or lies told to the bank. Just as affirmatively stating facts as true when the facts are not true may constitute a false representation, the law recognizes that false representations need not be based on spoken words alone. The deception may arise from the intentional omission or concealment of facts that make what was written, said, or done deliberately misleading.

The arrangement of the words or the circumstances in which they are used may convey a false and deceptive appearance. Accordingly, the misrepresentation may be written, oral, or rise from a course of conduct intended to communicate false facts to the bank. If there is intentional deception, the manner in which it is accomplished does not matter.

These false representations must be "material," which is a term I'll define momentarily. In short, it doesn't matter whether any decision-makers at the bank actually relied upon the misrepresentation; it is sufficient if the misrepresentation is one that is capable of influencing the bank's decision and is intended by the defendant to do so.

Let me repeat again that there are two ways the government may satisfy this first element beyond a reasonable doubt: First, by proving that there was a scheme to defraud a bank; or second, by proving that there was a scheme to obtain money or other property owned by or under the custody or control of the bank by false and fraudulent pretenses, representations, or promises.

Now, I've referred, in the context of both ways the government may satisfy this first element, to a "materiality" requirement. We use the word "material" to distinguish between the kinds of statements we care about and those that are of no real importance.

A material fact is one that would reasonably be expected to be of concern to a reasonable and prudent person relying on the representation or statement in making a decision. This means that if you find a particular statement of fact made by the defendant to have been false, you must then determine whether that statement of fact was one that a reasonable person might have considered important in making his

or her decision. And the same principle applies to fraudulent half-truths or omissions of material facts.

The government must -- excuse me.

The government need not prove an actual loss of funds by the bank; nor is it necessary for the government to establish that the defendant actually realized any gain from the scheme. The success of the scheme to defraud is irrelevant. What matters is whether there existed a scheme to defraud. The bank fraud statute prohibits successfully defrauding a financial institution, as well as attempts to do so. You must concentrate on whether there is a scheme -- there was such a scheme.

It does not matter whether the bank involved might have discovered the fraud, had it probed further or been more careful. If you find that a scheme or artifice existed, it is irrelevant whether you believe the bank was careless, gullible, or even negligent.

Finally, in order to establish the existence of a scheme, the government is not required to establish that the defendant himself started the scheme to defraud; it's sufficient if you find that a scheme to defraud existed, even if initiated by another.

If you find that the government has sustained its burden of proof that a scheme to defraud a bank or to obtain money by false pretenses did exist as charged, you next should

consider the second element.

I'm about to turn now to the second element.

The second element that the government must establish beyond a reasonable doubt is that the defendant executed or attempted to execute the scheme knowingly, willfully, and with the intent to defraud the bank or to obtain money or property owned by the bank or under the bank's custody or control.

A person acts knowingly when he acts voluntarily and deliberately, rather than mistakenly or inadvertently. A person acts willfully when he acts knowingly and purposely, with an intent to do something the law forbids, that is to say, with a bad purpose either to disobey or disregard the law. It's not necessary that the defendant knew that he was violating a particular law; it is enough if you find that he was aware that what he was doing was, in general, unlawful.

To act with the intent to defraud means to act knowingly and with a specific intent to deceive for the purpose of causing some financial loss to another.

The question of whether a person acted knowingly, willfully, and with intent to defraud is a question of fact for you to determine, like any other question of fact. Direct proof of knowledge and fraudulent intent is almost never available. It would be a rare case where it could be shown that a person wrote or stated that as of a given time in the past, he committed an act with fraudulent intent. Such direct

proof is not required.

Accordingly, the ultimate facts of knowledge and criminal intent may be established by circumstantial evidence, based on a person's outward manifestations, his words, his conduct, his acts, all the surrounding circumstances disclosed by the evidence, and the rational or logical inferences that may be drawn from the evidence. Use your common sense. But regardless of whether you look to direct evidence, circumstantial evidence, or a combination thereof, the government must establish the essential elements of the crime charged beyond a reasonable doubt, including the requisite mental states.

The government must prove beyond a reasonable doubt that the defendant participated in the alleged scheme with an understanding of its fraudulent or deceptive character and with the intent to help it succeed. There are certain things the government need not prove in order to meet that burden. It need not prove that the defendant participated in or even knew about all operations of the scheme.

It need not prove that the defendant originated the scheme or participated in it from its inception, since a person who participates in a scheme -- even after it begins -- is just as guilty as those who participated from the beginning, as long as he becomes aware of the scheme's general purpose and operation and acts intentionally to further its unlawful goal

or goals. It need not prove that the defendant participated in the scheme to the same degree as other participants. And finally, the government need not prove actual or potential loss to the bank, so long as there's evidence that the defendant intended to expose the bank to such loss.

Turning to the third element.

The third and final element that the government must prove beyond a reasonable doubt is that the bank that was the subject of the defendant's scheme or artifice was a federally-insured financial institution. This simply means that the bank's deposits had to be insured by the Federal Deposit Insurance Corporation. The government need not show that the defendant knew that the bank in question was federally insured to establish -- excuse me, to satisfy this first -- this third element; it must prove, however, that the defendant intended to defraud a financial institution.

Now, the bank fraud statute prohibits not only successfully defrauding a financial institution, but also attempting, which means trying to do so. And thus, the government is required to prove only that the defendant attempted or tried to execute the alleged scheme or artifice. There is no need for the government to prove that the defendant was successful in this endeavor.

In order to prove that the defendant attempted bank fraud or wire fraud, the -- excuse me, bank fraud, the evidence

must show beyond a reasonable doubt that, (1) the defendant intended to commit the bank fraud; and (2) the defendant willfully took some action that was a substantial step in an effort to bring about or accomplish the crime. Mere intention to commit a specific crime does not amount to an attempt. In order to convict the defendant of an attempt, you must find beyond a reasonable doubt both that he intended to commit the crime of bank fraud, and that he took some action that was a substantial step towards the commission of that crime.

Merely preparing to commit a crime is not the same thing as taking a substantial step towards the commission of the crime. The defendant must go beyond simply preparing and perform an act that confirms his intention to execute the scheme. The government does not have to prove that the defendant did everything except take the last step necessary to complete the scheme; any substantial step beyond mere preparation is enough.

That concludes my discussion of bank fraud.

In a moment, I'm going to turn to Counts Three and Four, which charge the offense of wire fraud.

All right. I'm now going to turn to Counts Three and Four, both of which charge the defendant with wire fraud, in violation of Title 18, United States Code, Section 1343.

Count Three charges the defendant with a wire fraud scheme in connection with the deposit in April 2019 of the 27

checks which are the subject of Count One, allegedly by creating, and then making the false pretense and representation to the bank that the defendant had the account holders' authorization to deposit those checks.

Count Three charges -- and again, I'm reading from the indictment -- that -- and I'm quoting: "From at least in or about April 2019, up to and including at least in or about June 2019, in the Southern District of New York and elsewhere, Ari Teman, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, Teman deposited counterfeit checks, drawing funds from accounts belonging to 'Entity 1,' 'Entity 2,' and 'Entity 3,' and subsequently attempted to and did use those funds for his personal benefit and, in furtherance of such a scheme, caused a wire communication to be sent."

Count Four charges the defendant with a wire fraud scheme in connection with a deposit in March 2019 of the two checks which are the subject of Count Two, allegedly by creating, and then making the false pretense and representation

to the bank that the defendant had the account holders' authorization to deposit those checks.

Count Four charges -- and again, I'm reading from the indictment -- that, and I quote: "In or about March 2019, in the Southern District of New York and elsewhere, Ari Teman, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and caused to be transmitted by means of wire, radio, and television communication, in interstate or foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, Teman deposited counterfeit checks, drawing funds from accounts belonging to Entity 3 and Entity 4, and subsequently attempted to and did use those funds for his personal benefit and, in furtherance of such a scheme, caused a wire communication to be sent."

Earlier -- I'm done quoting.

Earlier, I instructed you about who the terms "Entity 1," "Entity 2," "Entity 3," and "Entity 4," as used in Counts One and Two, refer to. Those instructions equally apply to Counts Three and Four.

I'm now going to turn to the elements of wire fraud.

In order to prove the defendant guilty of wire fraud in both Counts Three and Four, the government must establish

each of the following three elements beyond a reasonable doubt:

First, that there was a scheme or artifice to defraud or to obtain money or property by materially false or fraudulent pretenses, representations, or promises.

Second, that the defendant knowingly and willfully devised or participated in the scheme or artifice to defraud, with knowledge of the fraudulent nature of the scheme, and with a specific intent to defraud.

And third, in execution of that scheme, the defendant used or caused others to use interstate or foreign wires as specified in the indictment.

My instructions as to Counts One and Two related to bank fraud cover a number of the concepts relevant to Counts Three and Four; and so my instructions as to Counts Three and Four will be brief.

The first element that the government must prove beyond a reasonable doubt is that there was a scheme to defraud or obtain money or property. I've already instructed you in connection with Counts One and Two what it means to employ a scheme or artifice to defraud. Those instructions apply here as well.

The scheme that the government alleges in Count Three is the same scheme involving the defendant's depositing of 27 checks in April 2019, which is the subject of Count One. To find the first element as to Count Three, you must therefore

find that the scheme had as an object the use of the funds from these checks for the defendant's personal benefit.

And similarly, the scheme the government alleges in Count Four is the same scheme involving the defendant's depositing of two checks in March 2019, which is the subject of Count Two. To find the first element as to Count Four, you must therefore find that the scheme had as an object the use of the funds from these checks for the defendant's personal benefit.

Turning to the second element.

The second element that the government must prove beyond a reasonable doubt is that the defendant devised or participated in the scheme knowingly, willfully, and with a specific intent to defraud. I've already defined for you "knowingly," "willfully," and "with a specific intent to defraud." My earlier instructions apply here as well. I'm going to quickly define a few additional terms as to this element.

To "devise" a scheme to defraud is to concoct or plan it. To "participate" in the scheme to defraud means to associate oneself with it with the intent of making it succeed.

And the third and final element of the wire fraud charge that the government must establish beyond a reasonable doubt is that interstate or foreign wires were used in furtherance of the scheme to defraud.

So "wires" includes telephone calls, faxes, email, internet, radio, or television communications. The use of the wires must have been between states or between the United States and another country. The wire communication must pass between two or more states as, for example, a telephone call between New York and New Jersey; or it must pass between the United States and a foreign country, such as a telephone call between New York and London. The government is not required, however, to prove that the defendant knew or could foresee the interstate or international nature of the wire communication.

The use of the wires need not itself be fraudulent. Stated another way, the communication need not contain any fraudulent representation. To be in furtherance of the scheme, the wire communication must be incident to an essential part of the scheme to defraud and must have been caused by the defendant. It is sufficient if the wires were used to further or assist in carrying out the scheme to defraud or the scheme to obtain money by means of false representations.

It is not necessary for the defendant to be personally -- to be directly or personally involved in any wire communication, so long as the communication is reasonably foreseeable in the execution of the alleged scheme to defraud in which the defendant is accused of participating. In this regard, it's sufficient to establish this element of the crime if the evidence justifies a finding that the defendant caused

the wires to be used by others. This doesn't mean that the defendant must have specifically authorized others to execute a wire communication; rather, that when one does an act with knowledge that the use of the wires will follow in the ordinary course of business, or when such use of the wires can reasonably be foreseen -- even if not actually intended -- then he causes the wires to be used.

The government must prove beyond a reasonable doubt the particular use of the wires on which the indictment is based. And here, the wire fraud counts are based on wire communications related to the defendant's depositing of the alleged counterfeit checks. To convict the defendant on Counts Three and Four, you must unanimously agree on a particular one of these wires, and that it was in furtherance of the charged wire fraud scheme.

However, the government does not have to prove that the wire was used on the exact date charged; it's sufficient if the evidence establishes beyond a reasonable doubt that the wires were used on a date reasonably near the date or dates alleged.

All right. That concludes my review of the elements of wire fraud. I have a few final substantive instructions that are not particular to a specific count. The first relates to the requirement that the jury's verdict be unanimous.

Each of the four counts in the indictment charges the

defendant with an offense -- either bank fraud or wire fraud -- involving multiple checks drawn on the accounts of multiple entities. And thus, Counts One and Three allege these respective offenses in connection with the defendant's alleged deposit of 27 checks, each drawn on the account of one of three entities: ABJ Milano LLC, ABJ Lenox LLC, and 518 West 204 LLC. And Counts Two and Four allege these respective offenses in connection with the defendant's alleged deposit of two checks: One drawn on the account of 518 West 204 LLC, and the other drawn on the account of 18 Mercer Equity, Inc.

As to each count, I instruct you that the government need not prove and you need not find that the elements of the offense in question have been met with respect to each of the checks or each of the entities to which that count relates. However, to convict the defendant of a particular count, you must unanimously agree that the elements of the offense in question have been established beyond a reasonable doubt with respect to at least one entity to which that count relates.

So, for example, on Count Two, you may not return a verdict of guilty unless you unanimously agree that the elements of bank fraud have been established with respect to one of these two entities: 518 West 204 LLC, or 18 Mercer, Inc. to which that count relates.

If half of the jury found the elements of bank fraud had been established with respect to the check drawn on the

account of 518 West 204 LLC, and the other half of the jury found the elements of bank fraud had been established with respect to 18 Mercer, Inc., but the jury was not in unanimous agreement as to one entity, you could not return a verdict of guilty.

Next, let me turn to good faith.

An essential element of the crimes of bank fraud and wire fraud, as charged in Counts One through Four of the indictment, is intent to defraud. It follows that good faith on the part of the defendant is an absolute defense to a charge of fraud. The burden of establishing lack of good faith and criminal intent rests upon the prosecution. A defendant is under no burden to prove his good faith; rather, the government must prove bad faith or knowledge of falsity beyond a reasonable doubt.

Under the bank fraud and wire fraud statutes, even false representations or statements or omissions of material fact do not amount to a fraud unless done with fraudulent intent. However, misleading or deceptive a plan may be, it is not fraudulent if it was devised or carried out in good faith. If the defendant believed in good faith that he was acting properly -- even if he was mistaken in that belief, and even if others were injured by his conduct -- there is no crime.

A venture commenced in good faith may become fraudulent if it is continued after a fraudulent intent has

been formed; and therefore, good faith is no defense when the defendant first made representations in good faith, but later, during the time charged in the indictment, the defendant realized that the representations were false and nevertheless deliberately continued to make them.

You must review and put together all of the circumstances in deciding whether or not it has been established beyond a reasonable doubt that the defendant devised or participated in a scheme to defraud knowingly, willfully, and with the intent to defraud, or whether he acted in good faith.

There is a final consideration to bear in mind in deciding whether or not the defendant acted in good faith. You are instructed that if the defendant participated in the scheme to defraud, then a belief by the defendant -- if such a belief existed -- that ultimately everything would work out so that no one would lose any money, does not require a finding by you that he acted in good faith. If the defendant participated in the scheme for the purpose of causing financial or property loss to another, then no amount of honest belief on the part of the defendant that the scheme will cause ultimately a profit or cause no harm will excuse fraudulent actions or fraudulent representations by him.

Now let's turn to advice of counsel.

You've heard evidence that the defendant consulted

with a lawyer, Ariel Reinitz. You may consider that evidence in deciding whether the defendant acted knowingly, willfully, and with a specific intent to defraud.

The mere fact that the defendant may have received legal advice does not in itself necessarily constitute a complete defense to the charges of bank fraud and wire fraud. Instead, you must ask yourself whether the defendant honestly and in good faith sought the advice of a competent lawyer as to what he may lawfully do, whether he fully and honestly laid all the facts before his lawyer, and whether in good faith he honestly followed such advice, relying on it and believing it to be correct.

In short, you should consider whether, in seeking and obtaining advice from a lawyer, the defendant intended that his acts shall be lawful. If he did so, it is the law that a defendant cannot be convicted of a crime that involves willful and unlawful intent, even if such advice were an inaccurate construction of the law.

On the other hand, no man can willfully and knowingly violate the law and excuse himself from the consequences of his conduct by pleading that he followed the advice of his lawyer. Whether the defendant acted in good faith for the purpose of seeking guidance as to the specific acts in this case, and whether he made a full and complete report to his lawyer, and whether he acted substantially in accordance with the advice

received are questions for you to determine.

Let's talk now about a concept called "conscious avoidance."

I told you earlier that the defendant must have acted knowingly, as I have defined that term, in order to be convicted. That is true with respect to all four counts charged in the indictment. In determining whether the defendant acted knowingly, you may consider whether the defendant closed his eyes to what would otherwise have been obvious to him. That is what the phrase "conscious avoidance" refers to.

As I've told you before, acts done knowingly must be a product of a person's conscious intention; they cannot be the product of carelessness, negligence, or foolishness. But a person may not intentionally remain ignorant of a fact that is material and important to his conduct in order to escape the consequences of the criminal law.

Here, the government argues that the defendant consciously avoided material information insofar as he did not invoice or otherwise notify his customers in advance of his drawing and depositing checks on their accounts in March and April 2019 of his claim that they owed his business money in the amounts reflected on those checks. The government alleges that the defendant was thereby closing his eyes to the fact that the customers did not approve and would not have approved

those charges.

The defendant disputes that he consciously avoided learning such information. He argues that he believed in good faith, based on his communications with his customers and his understanding of communications he believed his attorney had had with his customers, that the customers had given him advance approve for these charges, and also advance approval to remotely create checks on their accounts as a means of paying the debts that they owed him.

As to this point, I instruct you as follows: An argument by the government of conscious avoidance is not a substitute for proof of knowledge; it's simply another factor that you, the jury, may consider in deciding what the defendant knew. Thus, if you find beyond a reasonable doubt that the defendant was aware that there was a high probability that a fact was so, but that the defendant deliberately avoided confirming that fact, such as by purposely closing his eyes to it or intentionally failing to investigate it, then you may treat this deliberate avoidance of positive knowledge as the equivalent of knowledge.

In sum, if you find that the defendant believed there was a high probability that a fact was so, and that the defendant deliberately and consciously avoided learning the truth of that fact, you may find that the defendant acted knowingly with respect to that fact. However, if you find that

the defendant actually believed the fact was not so, then you may not find that he acted knowingly with respect to that fact. You must judge all of the circumstances and all of the proof whether the government did or did not satisfy its burden of proof beyond a reasonable doubt.

Now, switching gears. Variances in dates and amounts, that's the next topic header here.

The indictment refers to a range of dates and monetary amounts. I instruct you that it does not matter if a specific event is alleged to have occurred on or about a certain date, but the testimony indicates that it, in fact, was a different date. And likewise, it doesn't matter if a transaction is alleged to have involved a certain amount of money, but the testimony indicates that it was a different amount of money. The law only requires a substantial similarity between the dates and amounts alleged in the indictment and the dates and amounts established by the evidence.

You've heard testimony that the defendant made statements in which he claimed that his conduct was consistent with innocence and not with guilt. The government claims that these statements in which the defendant exculpated himself are false. The defendant disputes this.

If you find that the defendant gave a false statement in order to divert suspicion from himself, you may infer -- but you are not required to infer -- that the defendant believed

that he was guilty. You may not, however, infer on the basis of this alone that the defendant is, in fact, guilty of the crimes for which he is charged. Whether or not the evidence as to the defendant's statements shows that the defendant believed he was guilty, and the significance, if any, to be attached to any such evidence, are matters for you, the jury, to decide.

One moment.

We're nearly done.

All right. Turning now to the concept of venue.

In addition to the elements that I've described, in order to convict on each charged offense, you must decide whether the crime occurred within the Southern District of New York. The Southern District of New York includes Manhattan, the Bronx, Westchester County, as well as some other areas.

In this regard, the government need not prove that the crime was committed in its entirety in this district or that the defendant himself was present here. It's sufficient to satisfy this element if any act in furtherance of the crime occurred in this district. The act itself may not be a criminal act; it could include, for example, executing a financial transaction within this district. And the act need not have been taken by the defendant, so long as the act was part of the crime that you find the defendant committed.

I should note that on this issue -- and this issue alone -- the government need not offer proof beyond a

reasonable doubt. Venue need be proven only by a preponderance of the evidence. The government has satisfied its venue obligations, therefore, if you conclude that it's more likely than not that the crime occurred within this district. If you find that the government has failed to prove this venue requirement, you must acquit the defendant of these charges.

That concludes Section 2. And the last and third section of my instructions is, by far, the shortest, and it just refers to the -- deals with the mechanics of jury deliberations.

I'm going to stretch my legs. You're at liberty to follow suit or not.

(Pause)

THE COURT: All right. Ladies and gentlemen, that concludes the substantive portion of my instructions to you.

You are about to go into the jury room and begin your deliberations.

If during those deliberations you want to see any of the exhibits, you may request that they be brought into the jury room. If you want any of the testimony read, you may also request that. Please remember that it's not always easy to locate what you might want, and so please be as specific as you possibly can in requesting exhibits or portions of the testimony. And please be patient.

With respect to requests for testimony, it can

sometimes take counsel and the Court some time going through the transcript to identify the portions that are responsive to your request. If you want any further explanation of the law as I have explained it to you, you may also request that.

Now, to assist you in your deliberations, I'm providing you with a rather ample care package. I'm giving you in here -- and there's basically a folder of 12 copies of each of the following things, so that everyone is on equal footing in the jury room: I'm giving you a list of witnesses in the order in which they testified; a list of exhibits, with a short neutral description of what each exhibit is by exhibit number. I think it also lists the witness who was the first to authenticate or through whose testimony that exhibit was admitted. A verdict form, which I'll discuss in a moment. And a copy of these instructions. Again, there's one for each juror. I'm also providing you with a copy of the indictment. But, again, I remind you that an indictment is not evidence.

Now, communications with the Court.

Your requests for exhibits or testimony -- in fact, any communications with the Court -- should be made to me in writing, signed by your foreperson -- I'll get to that in a moment -- and given to one of the marshals. In any event, do not tell me or anyone else how the jury stands on any issue until a unanimous verdict has been requested.

Notes. Some of you -- many of you -- have taken notes

periodically throughout this trial. I want to emphasize, as I did at the start of the trial, that as you're about to begin your deliberations, notes are simply an aid to memory. Notes that any of you may have made may not be given any greater weight or influence than the recollections or impressions of other jurors -- whether from notes or memory -- with respect to the evidence presented or what conclusions, if any, should be drawn from such evidence. All jurors' recollections are equal. Here's the key thing: If you can't agree on what you remember the testimony to have been, you can ask to have the transcript read back.

You will now retire in a moment to decide this case. Your function is to weigh the evidence in this case and to determine the guilt or lack of guilt of the defendant with respect to the count charged in the indictment. You must base your verdict solely on the evidence and these instructions as to the law. And you are obliged on your oath as jurors to follow the law as I instruct you, whether you agree or disagree with a particular law in question.

It is your duty as jurors to consult with one another and to deliberate with a view towards reaching an agreement. Each of you must decide the case for himself or herself, but you should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. Discuss and weigh

your respective opinions dispassionately, without regard to sympathy, without regard to prejudice, or favor for either party, and adopt that conclusion which, in your good conscience, appears to be in accordance with the truth.

When you are deliberating, all 12 jurors must be present in the jury room. If a juror is absent, you must stop deliberations.

Again, your verdict must be unanimous; but you are not bound to surrender your honest convictions concerning the effect or weight of the evidence for the mere purpose of returning a verdict or solely because of the opinion of other jurors. Each of you must make your own decision about the proper outcome of this case based on your consideration of the evidence and your discussion with your fellow jurors. No juror should surrender his or her conscientious beliefs solely for the purpose of returning a unanimous verdict.

Remember, at all times you are not partisans; you are judges. You are judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

If you are divided, do not report how the vote stands. If you reach a verdict, do not report what it is until you are asked in open court.

Now, I've prepared a verdict form for you to use in guiding your deliberation and recording your decision. Please use that form to record your verdict.

And finally, I referred a moment ago to a foreperson. The first thing you should do when you retire to deliberate is to take a vote to select one of you to sit as your foreperson, and then send out a note to me indicating whom you have chosen.

The foreperson does not have any more power or authority than any other juror; and his or her vote or opinion doesn't count for any more than any other juror's vote or opinion. The foreperson is merely your spokesperson to the Court. He or she will send out any notes. And when the jury has reached a verdict, he or she will notify the marshal that the jury has reached a verdict, and you will come into open court and, prompted by me, give that verdict.

As to the return of the verdict, after you have reached a verdict, your foreperson will fill in and date the form that has been given to you. All jurors must sign the form reflecting each juror's agreement with the verdict. The foreperson should then advise the marshal outside your door that you are ready to return to the courtroom.

I will stress that each of you must be in agreement with the verdict which is announced in court. Once your verdict is announced by your foreperson in open court and officially recorded, it cannot ordinarily be revoked.

In conclusion, ladies and gentlemen, I am sure that if you listen to the views of your fellow jurors and if you apply your own common sense, you will reach a fair verdict here.

A-1240

Members of the jury, that concludes my instructions to you. I'm going to ask you to remain seated while I see a show of hands from the attorneys to see if there are any additional instructions they want me to have you -- me give to you or if I inadvertently left something out or failed to cover.

Show of hands, anyone have anything to take up at the sidebar? Yes? All right. Counsel, I'll see you at the sidebar.

(Continued on next page)

A-1241

(At the sidebar)

THE COURT: Mr. Imperatore?

MR. IMPERATORE: I believe the Court may have misspoken on page 37, paragraph B at the top, fourth line down, the typewritten text uses the word "reached". I heard your Honor say "requested" instead of "reached". Very minor.

THE COURT: Very good.

Anything from you?

MR. GELFAND: Your Honor, the Court read the instruction correctly but the one that goes back to the jury should -- it's on page 25.

THE COURT: Yes, I'll correct that.

(In open court)

THE COURT: Ladies and gentlemen, I have two very small things just to draw your attention.

One is that a moment or two ago I misspoke. The following sentence at the top of page 37 of my instruction reads as follows: "In any event, do not tell me or anyone else how the jury stands on any issue until after a unanimous verdict is reached." Counsel advised me I inadvertently said the word "requested" instead of "reached". The word "reached" is what I wrote and meant to say.

The other thing is that simply due to an error on my part, on page 25, under the subheadline of attempt, a sentence begins "In order to prove that the defendant attempted bank

fraud or wire fraud..." When I spoke to you I omitted the word "or prior fraud" because it wasn't supposed to be here. That's part of the bank fraud instruction. When you see that on page 25, ignore the three words "or wire fraud".

All right. One moment. Before you retire to the jury room, I must excuse our two alternates, with the great thanks of the Court. You two, like everybody else, have been extremely attentive and patient, and I am in your debt, as we all are. I am sorry that you will miss the experience of deliberating the jury, but the law provides for a jury of 12 persons in this case, so before the rest of the jury retires into the jury room, I'm going to ask you if you have any clothing or objects there, to promptly go to the jury room and pick those up and then withdraw at that point. After I have sworn our marshal, the rest of the jury will then enter the jury room to begin deliberations.

Alternates, I have this important instruction to give: Please, do not discuss the case with anyone or research the case over the next few days. The same instructions that have guided you throughout the trial need to continue to guide you, and here is why: It is possible -- and I have actually had this occur in a trial -- that unexpected developments such as deliberating juror's serious illness may require the substitution of the deliberating juror by an alternate, and so it's vital that you not speak to anybody about the case, or

research the case, or do anything that would compromise your service, until you have been notified that the jury's deliberations are over and the jury has been excused. If you would like to be advised of the outcome of the trial, please be sure that Mr. Smallman has a phone number to reach you. He is going to ask you for your contact information. In the unlikely circumstance that we need to bring you back, Mr. Smallman will need to reach you and reel you back in here. So with that you have our thanks. Mr. Smallman is going to bring the two of you into the jury room. As soon as he has told me that you are out of the jury room, ladies and gentlemen, you will go back.

While we're doing that, let me swear in our marshal. Marshal, please come forward. Good morning.

(Marshal sworn)

THE COURT: Ladies and gentlemen, just as to the schedule for today, lunch will appear, and I am assuming it will be in the 12:30 to 1 range. You are not obliged to still be deliberating at lunch. It's there if you are still deliberating. Similarly, the usual afternoon snack will also appear. Mr. Smallman is on that too, and that will be in the 2:30 to 3 range. Again, I make no presumption that you will be or won't be deliberating then, but I simply order food for you so that it's there.

If you are still deliberating at 5 o'clock, I will bring you out to wish you well and say good night to you, and

then you will resume your deliberations tomorrow beginning at the same time that we have always started. So, that's our schedule for today.

Mr. Smallman, I have sworn the marshal. May I ask you to come forward, and I can give you their care package.

Again, your first order or business is to choose a foreman. Thank you. You may now discuss the case.

(Jury retires to begin deliberations at 11:02 a.m.)

THE COURT: Be seated. Thank you, counsel, for being active readers and catching both of those glitches. Beginning with the government, anything to raise?

MR. BHATIA: Nothing, your Honor.

THE COURT: Defense?

MR. GELFAND: No, your Honor.

THE COURT: Stay close. I expect we will have a note both about the foreperson very soon and soon enough asking for certain exhibits. Mr. Smallman will alert me as soon as we have any notes. All right. Thank you. I will see you all soon.

(Time noted 12:07 p.m.; jury not present)

THE COURT: All right. Welcome back, everyone. We have two notes from the jury. The first, which Mr. Smallman has marked as jury note 1, reads "Foreman," and then it gives the name of the person we understand to be Juror 2. And then Juror Note 2 simply reads "Exhibits," and then it lists a

number of exhibits. I am going to read them out slowly, and then counsel will let me know whether there are any special complications with respect to any of them. Here they are in the order as listed: 113, 114, 147, 201, 202, 409C, 441, 442 and 443." Then it says "all 700 series" and then it says "D2".

Now, all of those except for 113 are recognizable to me as a short documentary exhibit. Is 113 an electronic document?

MR. BHATIA: Yes, it's the electronic spreadsheet.

THE COURT: So is the right answer then to promptly pull together a set for each of the other exhibits of three, let us say, I will have them up here, and I will bring the jury in and you will put up on the screen 113, and I will explain to them that that is accessible only electronically, but that the others Mr. Smallman will be handing them? Is that the right way to do this?

MR. BHATIA: Your Honor, we have prepared the sets of three for the hard copy exhibits and those can go back. For 113 we have a laptop that's available that is clean and it can't access the Internet that we can send back with 113 on it.

THE COURT: You've got a clean laptop that has nothing on it except for 113?

MR. BHATIA: That's right.

THE COURT: How did you manage that?

MR. BHATIA: We had prepared for the possibility of

sending back --

THE COURT: Right. But I want to make sure if we're sending them a laptop it's tailored only to the exhibit that they have requested that can't be accessed in hard copy. So it only has one 113 on it?

MR. BHATIA: One moment. I think it only has 113, but let me talk to Mr. Magliocco for a moment.

THE COURT: Yes, thank you.

MR. BHATIA: Your Honor, so there is no content on this laptop. 113 is actually on a disk, and we have provided the disk in the laptop, and it can't access anything.

THE COURT: So, in other words, they can play with it in the jury room without having to come out to court each time they want to look at it.

MR. BHATIA: That's right.

THE COURT: Have you shown the laptop yet to the defense?

MR. BHATIA: We have not, your Honor.

THE COURT: Do you have the other exhibits handy?

MR. BHATIA: We do.

THE COURT: Why don't we take a five minute recess. Why don't you do a show-and-tell with the defense, because before I send back the laptop, I want to make sure they have seen the disk, seen the laptop, have confirmed comfortably themselves that there is no risk of any mischief or something

like that. I just want to do a double check. Assuming that that works, defense counsel, is that a workable approach from your perspective?

MR. GELFAND: Yes.

THE COURT: I will be back in five minutes. Have a folder for me with triplicate. In other words, have a set of three of each of the others ones, and have shown the defense the laptop and the disk's operation, and give me a few words that I can use when I bring the jury out.

Ordinarily, I wouldn't bring the jury out to hand them exhibits, but because there is a laptop, I want to be careful and take a moment to explain what is going on, so give me a few words I can use to make sure that I've adequately explained what they need to do to operate it. Thank you. I'll be back in five minutes.

(Recess)

THE COURT: All right. Defense, have you had a chance to look at the laptop?

MR. GELFAND: We have, your Honor. And the laptop is not clean. It has a number of files; it has and audio MP3 file; it has references to other files that appear to either be unable to be opened or perhaps need some other opening. So, we are not comfortable with that laptop.

THE COURT: Government, is that correct?

MR. BHATIA: Your Honor, we have removed all the

references to the other files, and there is no audio file on the drive anymore. We were going to show it to defense counsel.

THE COURT: Why don't you show it as amended to defense counsel.

(Pause)

MR. GELFAND: Unless I'm misunderstanding, apparently it's not removed.

THE COURT: All right. I don't want to waste the jury's time while we're fixing this. It seems to me that it probably makes the most sense to bring them out here and to put up 113 on the screen for now and hand them the other exhibits and, if there is a renewed request for it, tell them that we can try to arrange to have a laptop that is cleared of everything but that. At least that way they will get a prompt answer from us.

MR. BHATIA: That's right. And in the interim we will get a laptop in case they have that request.

THE COURT: I think that will be all to the good. Have you reviewed together the copies of these other exhibits, and can you hand those up to me?

Government counsel, can Exhibit 113 be printed out? Is there some reason it's uncapable of being printed out?

MR. BHATIA: It's too voluminous lengthwise, so if you print out one part of it, you can't see the other part of it.

THE COURT: Let me ask you as to the hard copies -- these are not in any order right now -- have you reviewed these with the defense?

MR. BHATIA: I have reviewed them. I don't know if defense counsel has.

THE COURT: Counsel, for obvious reasons, before I send something to the jury I want each side to sign off on it to make sure it is what the jury has requested. You have not shown this to the defense, correct?

All right. Show this to the defense. Let's get it in the order that the jury requested it, so there is no question that the sorting is out of whack. Once it's been blessed by the defense, I will bring in the jury.

All right. Have both sides looked at the printouts of three copies of all exhibits other than 113?

MR. BHATIA: Yes, your Honor.

MR. DIRUZZO: Yes.

THE COURT: And those are fine going to the jury?

MR. BHATIA: Yes.

MR. DIRUZZO: Yes.

THE COURT: I will have Mr. Smallman bring out the jury. When I call on Mr. Magliocco, I will ask you to bring up Exhibit 113. I will explain it is by its nature not something that reduces to a hard copy; they should look at it here and if they want a further look at it we can arrange for a clean

laptop to be sent in.

Anything else anyone wants me to say to the jury?

MR. GELFAND: Just a question I have is just why 113 can't be printed? I mean Excel can be printed wide.

THE COURT: Mr. Bhatia?

MR. BHATIA: We tried to print it out, your Honor, and when we tried to print it out it affected the way the spreadsheet looked. Columns would get wider or smaller, they would get longer. We can try again, your Honor.

THE COURT: Why don't you try. For the time being I will proceed in this fashion, but it hadn't at least appeared to me to be on a scale that made it inherently unworkable.

Why don't you keep trying, but for the time being we will bring in the jury. But once the jury is gone, let's try on two tracks to assist their review, both the clean laptop track and to defense counsel's point see if we can get a printout.

Mr. Smallman, let's get the jury.

(Jury present; time noted 12:27 p.m.)

THE COURT: Welcome back, ladies and gentlemen. Please be seated. I have received your first two notes, the first of which tells me that Juror 2 is your foreperson, the second of which seeks certain exhibits.

With the exception of one exhibit, we're going to be giving them to you in this folder. There are three copies of

each of the exhibits you have sought. The reason I bought you out is that one of the exhibits, 113, at least at this point we have not found a way to reproduce it in a hard paper copy. It's a spreadsheet. For the time being what we are going to do it put it up on the screen so you can look at it on the screen. If we get a note from you indicating you want to look at it in a different way in the jury room, we are in the process of getting a clean laptop and a disk, and you would then be able to review it in the jury room on a clean laptop and a disk. I will wait to see if you so request, and if that's the case, we will get it to you as soon as we possibly can in that format, but I wanted to explain to you that that is what is going on. In a moment Mr. Smallman will hand you this binder.

But for the time being though, Mr. Magliocco, would you kindly put Exhibit 113 up on the jury screen.

Now, counsel, this is an Excel document. Mr. Magliocco, could you just slowly page down to the next page. Keep going. Why don't you stop there for a moment.

Why don't you, Mr. Magliocco, go do that again. I want the jury to see the full extent of the document. I will wait at that point for a jury note whether or not you need this on a laptop or not, but I want the jury just to see the full extent of the document. Go ahead, Mr. Magliocco.

All right, I think I have seen enough to note that this is a long document.

Ladies and gentlemen, I don't want to have an interaction with you; I'd prefer to do it in writing.

So, go back to the jury room. If you want this on a laptop, we will be as responsive as we possibly can. I will also look into whether there is some way of getting this data prepared for you in a hard copy, but counsel advise me that may be a hard ask. So, it may be that the way you wind up reviewing this is through a laptop and disk, in which case Mr. Smallman will get it to you as soon as possible.

Mr. Smallman is handing you the binder. Why don't you return to the jury room. Thank you.

(Jury resumes deliberations at 11:31 a.m.)

THE COURT: It seems to me close to an inevitability we're going to get a request for the laptop. It became clear as Mr. Magliocco began to scroll through the document that it's a long spreadsheet and it was not particularly workable to ask them en masse to be scanning it in court. There is a lot of small print, and it appears to go on for many, many different lines.

So, government, let's really jump on the process of getting a clean laptop with the disk and making sure the defense is fine with it so that as soon as they ask I can take a look at it and we can send it in.

MR. BHATIA: We will, your Honor. And upon looking at the spreadsheet, I recall there are tabs along the bottom, and

if we printed this in hard copy they wouldn't be able to see the tab numbers, so I think the only way to really respond to this request is through the laptop.

THE COURT: I'm all for doing it through the laptop. You may be right that there are enough tabs that it would be hard to print it out. It's not inconceivable that if the number of tabs is modest one could have a printout per tab. In any event, I would prefer if you tried to pursue this both ways, but the laptop is apparently going to be the first one to achieve success, so let me know as soon as that's ready.

MR. BHATIA: We will.

THE COURT: Thank you.

MR. DIRUZZO: Your Honor, just so it's clear, I want to make sure that the mode of the Excel file is protected so that it can't be altered or changed by the members of the jury. Because I use Excel a lot, and it's very easy to go in there and accidentally mess up a formula, delete something when you're not paying attention, and the next thing you know the problem cascades throughout the entire Excel file.

THE COURT: I took as a given that that would be so, but, government, you obviously should check that. I want to be sure that we have functionality that doesn't exceed that which was used in the case of the trial or that's necessary to meaningfully review this.

MR. BHATIA: Your Honor, let me speak to defense

counsel more about this. I think we want to provide them the file as we got it, as it's marked on the disk. I'm not sure about adding extra protections on cells that wouldn't let them be altered. I think it should be sent to them on the disk as it was received into evidence.

THE COURT: Does the disk -- what is important is that the jury get the information that appears on the front of this document or by clicking separate tabs. It doesn't appear that mathematical or sorting exercises are needed here.

I'm not going to resolve an abstraction. Mr. DiRuzzo, you should take a look at the laptop with the disk and let me know if there is some functionality there that interferes -- that presents some problem. If the parties can't solve it, I will determine whether that's an issue. OK? It makes no sense for me to resolve an abstraction.

MR. DIRUZZO: OK.

THE COURT: Very good. So operating on the assumption that we're likely to get a request, let's solve this problem pronto; and as soon as we get a request, I will come back down. Thank you.

(Time noted 12:36, jury not present)

THE COURT: We have jury note 3 which reads "No laptop. Thank you." So, man of few words.

So I think Mr. Magliocco can probably stand down. Good news. All right. Thank you.

Counsel, at 1:15 I will be taking a guilty plea here. I will need to take up some preliminary business with counsel, but eventually I will bring out the parties there. All I will need is about half of each table kept clear so that I can take charge of that. So just be mindful at 1:15 I will need a little bit of free space here. Thank you.

MR. DIRUZZO: And, your Honor, while the jury is deliberating, does counsel get like a set amount of time where like if we're down at the cafeteria mid meal that we're excused from coming up, so to speak?

THE COURT: I need somebody here at all times. I'm happy for the others to go and eat. Frankly, I'm OK with you bringing food into the courtroom as long as you conceal it from the jury coming out. Just when the jury comes out, hide your food. I think that's your main way to deal with this problem.

(jury not present; time noted 1:20 p.m.)

THE COURT: All right. So in United States v. Teman, we have had two more notes. One of them was from an unidentified juror simply asking "Can we step out for lunch? Outside of the building?" And I had Mr. Smallman convey through the marshals regrettably no.

More important, we have the following note, jury note 5. It reads "Exhibits" and then it lists the following five: 409, 409A, 409B, 413 and 431.

Counsel, I take it all of those are capable of being

reproduced in triplicate?

MR. BHATIA: That's right, we have them right here: Defense counsel is reviewing them.

THE COURT: Why don't you review them. One counsel have signed off, I will give them to Mr. Smallman and then we can move from this proceeding and move to the other proceeding in this courtroom.

MR. GELFAND: We have had an opportunity to review them. We are satisfied that what is here is responsive to the note.

THE COURT: Let me just take a look at them.

All right, very good. Since all counsel are satisfied, I will let Mr. Smallman give this to the marshal. Thank you. We are adjourned now in United States v. Teman.

(Time noted 3:42; jury not present)

THE COURT: Counsel, we have received a note that we marked as jury note 6. It simply reads "Transcript for Joseph Soleimani testimony, Ariel Reinitz."

I interpret that as meaning the entirety of the transcript for both the Soleimani trial testimony and the Reinitz trial testimony. Anyone disagree that that's clearly what they're seeking?

MR. DIRUZZO: No, your Honor, that sounds right.

MR. GELFAND: No, your Honor.

THE COURT: What is easier about this is, of course,

there are no subject matter limitations, it's just lock, stock and barrel the testimony. In that respect it makes the process of extract can the testimony easier. However, I want to make sure as you embark on this, we have an understanding on ground rules with respect to sustained objections, which is to say that where an objection was sustained -- you know, I don't know whether the witness then popped off with an answer or something like that -- we should be excluding the objected to question and the court ruling. And where I have granted a motion to strike or to disregard, obviously you need to be sensitive to that. So just as you're going through the transcript, in addition of course to colloquies at the side bar, you should be getting rid of sustained objections and the questions to which they relate as well as the testimony that I've struck.

It would be my inclination to have at least three copies, let us say, of each of the proposed transcripts so that they can share them around the jury room.

My inclination would be to bring the jury out when we have these ready so that I can instruct them that notwithstanding the fact that they have sought this testimony, they shouldn't be undue weight on the testimony merely because they have it as opposed to the balance of it in the jury room.

Anyone object to my doing that?

MR. BHATIA: That's fine.

MR. GELFAND: That's fine.

THE COURT: Counsel, you have the transcripts here. Get to work. I'm hopeful that given the breadth of the request there actually won't be any objections among you as to the blocking and tackling, but let Mr. Smallman know as soon as you have reached agreement or as soon as you've identified areas of disagreement so I can come down and promptly resolve disputes or bless your outcome so we can get this done promptly.

Something you wanted to raise?

MR. IMPERATORE: Your Honor, I just wanted to raise a question. There were instances during the testimony where a witness would give an answer and your Honor might have admonished the witness that the answer was either not responsive to the question or something along those lines. Those are technically not sustained objections. What is your Honor's practice?

THE COURT: Well, if I wasn't asked to strike the answer, it's still part of the record. Of course the jury heard my colloquy with the witness, so I think we keep that in. It's really only where I have sustained an objection -- in which case it's legally as if the event didn't happen -- or where I've actually struck something where you should be redacting. OK? Does that answer your request he?

MR. BHATIA: Yes.

MR. IMPERATORE: Yes. Thank you.

THE COURT: I will wait to hear from you.

(Time noted 4:37; jury not present)

THE COURT: All right. Counsel, I have been handed a copy of Soleimani. I take it this is your agreed-upon review of Soleimani?

MR. BHATIA: Yes, your Honor.

MR. GELFAND: Yes, your Honor.

THE COURT: And no disputes?

MR. GELFAND: No disputes.

THE COURT: Wonderful. I will flip through it, and I understand Mr. Magliocco is en route with the other one?

MR. BHATIA: That's correct.

THE COURT: All right.

Were you able to resolve Reinitz also without any disputes on how to apply redactions?

MR. BHATIA: Yes, your Honor.

THE COURT: Great news. Thank you. As soon as we get the Reinitz one, I will review it and we will get the jury.

(Pause)

MR. IMPERATORE: We defer to you, but it's 4:40, if the Court wants to bring them out, we will have the other transcript ready and deliver it as soon as possible.

THE COURT: Unless anyone disagrees, I'm inclined to bring the jury out, so at least they know where's working hard on their behalf.

Mr. Smallman, let's bring in the jury.

We have just gotten jury note 7, which reads "Can we please resume tomorrow?"

THE COURT: So let me bring them out, and I will tell them what we have and explain it will be available for them first thing tomorrow.

OK. Let's go get the jury.

(Jury present; time noted 4:45 p.m.)

THE COURT: All right, welcome back, ladies and gentlemen. Be seated.

I have received two notes which I want to respond to of yours. The first one is your note of a little while ago that reads "Transcript for Joseph Soleimani testimony, Ariel Reinitz" which I understood to be his testimony as well. I was just about to bring you these when I got your next note which reads "Can we please resume tomorrow?" The answer of course is yes.

I want to tell you about these transcripts. As you can tell, it takes a little bit of time because it requires going through on a computer the entirety essentially of the witness's testimony to isolate the portions that are properly given to you. Sustained objections, items I have asked to be stricken, we have redacted. Just because of computer functionality, the redactions in the Soleimani testimony are made with black bars and with respect to the Reinitz it's whited out, but it's the same effect.

In any event, counsel worked hard to review the transcripts, and I have just received them printed out in triplicate. So, I will give these to you to be brought back into the jury room.

There is one instruction I do need to give you in connection with the review of transcripts, which is, simply because you happen to have those transcripts, there is a natural human risk that you would attach greater weight to the copies of the transcripts you happen to have as opposed to the other ones, the rest of the testimony in the case that you heard. I just want to make sure you guard against that. The mere fact that you have happened to ask for that testimony should not lead you to give it outsized importance. You should consider all of the testimony of the trial in reaching your verdict.

So, what I will do is I will have Mr. Smallman give that to you. I understand right now it's quarter of five, and you would like to break -- just nod. I take it you would like to break now instead of 5 o'clock. Happy to grant that.

Mr. Smallman will give this to your foreman. When you all get here tomorrow at 9:30, once you are all here we will bring you out and you can get started.

Please don't start deliberating until I have brought you out into the courtroom. Remember, we need you all here, so if anybody is late tomorrow we won't be able to begin -- the

jury won't be able to begin deliberating, so all the more important for everybody to be here on time.

As always, breakfast will be served at 8:45, but I need you at 9:30. And remember we will again be serving you lunch tomorrow in the event you are still deliberating as of the lunch break. So Mr. Smallman will have you complete lunch menu orders in the morning.

As always, have a good evening. I remind you do not discuss the case. Notwithstanding the fact that you can discuss it as a group of 12 when you're all together in the jury room, you can't otherwise discuss or research the case. Have a safe trip home. I will see you tomorrow morning.

(Jury retires for the evening)

THE COURT: Counsel, I take it no one has anything to raise. You are all free to leave. I will need somebody here at 9 o'clock in the remote event that there is some issue to raise, although I really doubt it, and at 9:30 I will need you here when I bring out the jury to resume their deliberations.

Fair warning, I have a three defendant criminal conference tomorrow -- four defendant criminal conference -- tomorrow at 10:30 in one of the ceremonial courtrooms downstairs. I will be bouncing back and forth. I will give this my priority in the event there is a note or something I need to attend to. I will bounce upstairs as quickly as I can, but just as fair warning, there may be a little more delay in

my responsiveness than I ordinarily like just because of that conference.

Have a good evening. I will see you tomorrow.

(Trial adjourned to January 29, 2020 at 9 a.m.)

A-1264

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

v. 19 CR 696 (PAE)

ARI TEMAN,

Defendant. JURY TRIAL

----------x

New York, N.Y.
January 29, 2020
9:40 a.m.

Before:

HON. PAUL A. ENGELMAYER,

District Judge

APPEARANCES

GEOFFREY S. BERMAN,
United States Attorney for the
Southern District of New York
KEDAR S. BHATIA
EDWARD A. IMPERATORE
Assistant United States Attorneys

JOSEPH A. DIRUZZO, III
JUSTIN GELFAND
Attorneys for Defendant

ALSO PRESENT: DANIEL ALESSANDRINO, NYPD
WILLIAM MAGLIOCCO, Paralegal, USAO

(Trial resumed; jury not present)

(Time noted 9:42 a.m.; jury not present)

THE COURT: Good morning, everyone. Mr. Smallman tells me the jury is here, and so I will bring them out into the courtroom. I had an off-the-record conversation with counsel earlier when I appeared. Nobody had anything to raise, save that counsel noted a change in the handwriting on some of the more recent jury notes, and I will, at counsel's good suggestion, remind them to have the foreperson initial each note.

Does anyone have anything to raise before the jury comes in?

MR. GELFAND: No, your Honor.

MR. BHATIA: No, your Honor.

(Time noted 9:44 a.m.; jury present).

THE COURT: Good morning, ladies and gentlemen. Please be seated. All right. I will note for the record that all 12 members of our jury are here. I hope everyone had a good evening and a good morning. You may now, with everyone here, resume your deliberations.

One matter purely of housekeeping. I would ask just for future notes from the jury that each of them be initialed by your foreperson.

OK. Very good. With that, you may resume your deliberations. I will see you at a later point. Thank you.

(Jury resumes their deliberations at 9:46 a.m.)

THE COURT: All right, counsel, be seated. As I mentioned yesterday, I have a multi-defendant conference this morning in one of the downstairs courtrooms. Mr. Smallman will be assisting me with that conference. My law clerk will be here in Mr. Smallman's sted. In the event we get a note, the CSO will notify my law clerk, we will share the note with you, and I will respond as soon as I can.

Steve our court reporter, who is assisting with this trial, will also be covering that conference, so we will be traveling as a pack back and forth as needed. I will need one person again from each team to stay close. My conference begins at 10:30. I don't know whether or not we will be called upon by our jury to do anything between now and then. See you soon.

(Time noted 10:33; jury not present).

THE COURT: All right. Be seated. Ladies and gentlemen, I have gotten a note which we're going to mark as jury note 8. It reads "Good morning. We the jury have reached a verdict," and it's signed by the foreperson number 2.

So, in a moment I will bring out the jury, and my practice is that I have Mr. Smallman take the verdict form from the foreperson; I review it just to make sure it is in form, in good order; and then I read aloud the verdict and ask the foreperson to confirm that that is in fact the jury's verdict.

Upon the request of any party, then I poll the jury to make sure that is in fact each member's verdict. Is there a request for me to poll the jury?

MR. DIRUZZO: Yes, your Honor.

THE COURT: All right, then we will do that.

Obviously I am in no position to know what the verdict will be, but my practice regardless is to meet with the jury to thank them for their service. When I do that I also will tell them that they are at liberty to speak with anybody they wish to, but they're not required to speak with anybody, and I tell them as well that they may wish to consider -- if they are speaking about their experience with anybody -- hesitating to share what other people said in the jury room other than themselves. In other words, it's one thing to talk about your own views, it's another thing to give up what other jurors said. It's up to them ultimately, but that's the guidance I give them.

I don't know whether or not the nature of the verdict will require us to have any further business together but, regardless, I will ask you all to stay. When I go visit the jury to thank them, I will then come back out and take care of what, if any, business remains.

Anything counsel wishes to raise before Mr. Smallman brings in the jury?

MR. BHATIA: No, your Honor.

MR. DIRUZZO: No, your Honor.

THE COURT: All right. Mr. Smallman, let's bring in the jury.

MR. DIRUZZO: One thing, your Honor. I assume you would like counsel and the defendant to stand when you pronounce the verdict?

THE COURT: It's not necessary.

MR. DIRUZZO: OK.

(Time noted 10:37 a.m.; jury present)

THE COURT: Ladies and gentlemen, be seated. I have received a note which reads "Good morning. We the jury have reached a verdict," and it's signed by your foreperson. May I ask that the foreperson please hand to Mr. Smallman a copy of your signed verdict form.

All right. I have reviewed the verdict form, and it is in good order, and it has been signed by 12 people. Here is what I'm going to do. I'm going to read aloud the verdict form and then I will ask the foreperson whether this is in fact the jury's verdict. And I will expect -- I will read it, and you will let me know whether or not I have read it correctly.

After that, Mr. Smallman one by one will ask each member of the jury whether what I've read aloud is in fact the jury's verdict. So listen as I read aloud the verdict form so that you can answer his question.

After that, I will have some closing words of thanks

and excuse you, and then I will be pleased to spend a moment with you in the jury room thanking you in person for your service.

All right, with that, the jury's verdict is as follows:

On Count one, charging bank fraud with respect to the April 2019 checks: The jury's verdict is guilty.

With respect to Count Two, charging bank fraud with respect to the March 2019 checks: The jury's verdict is guilty.

With respect to Count Three, charging wire fraud with respect to the April 2019 checks: The jury's verdict is guilty.

With respect to Count Four, charging wire fraud as to the March 2019 checks: The jury's verdict is guilty.

And following the verdict appear the signatures of 12 people.

Juror 2, is that in fact the jury's verdict?

JUROR: Yes, it is, your Honor.

THE COURT: Thank you.

Mr. Smallman, if you would kindly poll the jury.

DEPURTY CLERK: Juror 1, is that your verdict?

JUROR: Yes.

DEPURTY CLERK: Number two?

JUROR: Yes.

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DEPURTY CLERK: Juror 3?

JUROR: Yes.

DEPURTY CLERK: Juror 4?

JUROR: Yes.

DEPURTY CLERK: Juror 5?

JUROR: Yes.

DEPURTY CLERK: Juror 6?

JUROR: Yes.

DEPURTY CLERK: Juror 7?

JUROR: Yes.

DEPURTY CLERK: Juror 8?

JUROR: Yes.

DEPURTY CLERK: Juror 9?

JUROR: Yes.

DEPURTY CLERK: Juror 10?

JUROR: Yes.

DEPURTY CLERK: 11?

JUROR: Yes.

DEPURTY CLERK: And Juror 12?

JUROR: Yes.

DEPURTY CLERK: Thank you.

THE COURT: All right. Ladies and gentlemen, I am about to excuse you, but I just want to take a moment and thank you. One of the real honors of my job is being able to watch at least in the detached way that I do jurors do their job --

at least the public parts of their job. It was quite apparent to me that from Wednesday through today all of you have been really locked in and very, very focused on the awesome responsibility you have as jurors. I could tell that just from the level of attention you were paying during the trial, the active note taking, the active listening that was apparent on all of your faces, and the thoughtful detailed notes and the obvious intensity that you brought to your deliberations.

We are all blessed and fortunate to have members of the public serving as jurors like you, doing your job as conscientiously and sincerely as you did, and I thank you from the bottom of my heart for your service.

In a moment, what I'm going to do is ask you to go into the jury room, collect your things. I'm going to come in with the members of my staff so I can shake all of your hands and thank you for your service and answer any questions and get any feedback you have about your jury service.

So, with that, you have my thanks. I will see you in the jury room in just a moment. As I said at the beginning, with this you are now excused from your jury service. You will get a letter from me in the mail in short order thanking you formally for your service but as a result of this your jury duty is now complete. Thank you. I will see you in the jury room in a moment.

(Jury dismissed)

THE COURT: All right. Be seated. Counsel, I will be out in a few minutes to take care of the various things that one must take care of after a verdict of this nature. The items I have on my list to cover include the defendant's status between now and the date of sentencing, the date for any post-trial motions, a sentencing date, and then there is the outstanding issue of the grand jury subpoena.

There may be other issues we need to take up. To the extent counsel want to confer on any of those matters, this will be a good time to do that. When I come out I will take up those and any other issues that counsel wish to raise.

(Recess)

THE COURT: We're going to mark the jury's verdict form as juror note 9. All right. So, there are a number of issues to take up. Let's begin with a sentencing date and a motions date.

Defense, do you expect to be making post trial motions?

MR. DIRUZZO: Yes, your Honor, we anticipate a 29(c) and a motion for a new trial. We have asked counsel for the government if they would be amenable for a two-week extension from the normal time, that would be four weeks in total.

THE COURT: Just give me the proposal as to when you would like to submit your motion. You can expect me to be receptive.

MR. DIRUZZO: Certainly, Judge. Today is the 29th, so February 26.

THE COURT: For your motion?

MR. DIRUZZO: For our post-trial motions, correct.

THE COURT: Government, when would you want to respond to that?

MR. BHATIA: We would request a month from that date, your Honor.

THE COURT: Four weeks from the 26th? So that would be March 25, correct?

MR. BHATIA: That's right.

THE COURT: All right. Defense, I'm happy to set that schedule. I don't think, knowing the case well as I do, that I will need a reply. I think after I read the motions, if there is something that I need further help on, I will commission a reply, but I'm not going to build a reply into the schedule and add to the work. I think I can be able to make an assessment in whatever direction based on the two motions, and if I need a reply, I will commission one.

MR. DIRUZZO: OK, Judge.

THE COURT: So, I'm happy to approve those dates.

All right. With respect to sentencing, I would envision a date approximately four months from now, counsel? Any reason why there is some special problem here that should suggest something shorter? Defense counsel, I assume you are

not seeking an expedited sentencing date which would mean for going the draft PSR?

MR. DIRUZZO: Correct, we are not expediting, so four months would be perfectly fine, your Honor.

THE COURT: The norm in this district is about three and a half months, but given the need to resolve post-trial motions, it seems to me smart to add a couple weeks.

Counsel, how about June the 4th at 10 a.m.?

MR. BHATIA: That's good for the government.

MR. DIRUZZO: That's good for us.

THE COURT: Let's assume that is the date. Obviously, in the event there is some unexpected change of circumstance, I'm certainly open to moving that, but let's set sentencing down for June the 4th.

Defense submissions in connection with sentencing are due two weeks before sentencing, and the government's submission is due one week before sentencing.

Defense, you should arrange for any pretrial interview of your client by the probation department within the next two weeks and, government, you should get your offense version to the probation department within the next two weeks.

MR. BHATIA: We will.

THE COURT: So, having taken care of motions and sentencing, there is the issue of the defendant's continued release and the terms of that release pending sentencing.

Government?

MR. BHATIA: Yes, your Honor. In this case we are seeking remand, and the reason for that is under 3143, your Honor, there is a presumption here at this stage of the proceeding, and of course the circumstances have changed quite a bit from before trial.

THE COURT: One moment. This is not, of course, the case under 3143 where detention is mandatory, correct? This is not like a heavy duty narcotics case or something like that.

MR. BHATIA: No.

THE COURT: So, refresh my memory, a post-trial presentencing in a nonmandatory case, what the standards now are.

MR. BHATIA: At this point, your Honor, the Court must find by clear and convincing evidence that the person is not likely to flee or pose a danger of safety to other persons or the community.

THE COURT: So clear and convincing applies both to the flight and danger provisions, and the burden is on the defendant.

MR. BHATIA: That's right.

THE COURT: And which are you invoking here in making that argument? Danger, flight, or both?

MR. BHATIA: Both, your Honor.

THE COURT: Explain.

MR. BHATIA: So, under a risk of flight, your Honor, we have conferred with defense counsel about this. As we understand it, the defendant does not have substantial assets that could be used to secure a bond otherwise, and we think that those also tend to show lack of ties to the community, which goes to the risk of flight.

THE COURT: I'm sorry, let's slow down here. What are the current terms of release?

MR. BHATIA: A $25,000 bond cosigned by one financially responsible person.

THE COURT: Who is that?

MR. BHATIA: I don't recall at this point, your Honor, who the FRB is.

THE COURT: Who is it, defense counsel?

MR. GELFAND: An individual named Levi Herman.

THE COURT: Who is that?

MR. GELFAND: A close friend of Mr. Teman's.

THE COURT: OK. Go ahead, government counsel. And your concern is that the existing bond and Mr. Herman's signature on it are not enough to insure the defendant's presence?

MR. BHATIA: That's right, your Honor.

THE COURT: What has the defendant's presence been like with pretrial supervision and appearance in court?

MR. BHATIA: The defendant has appeared in court and,

as we understand it, he has complied with the terms of his pretrial supervision, except we have noted for your Honor before trial and during trial the defendant's statements about the victims in this case, and the defendant made public statements disparaging witnesses in this case.

THE COURT: Right. But, look, there was no order in place directing him not to do that. It wasn't a smart decision but it wasn't against any rule or law. Once I directed him not to do that, did he comply?

Government? Once I directed him not to disparage the victims, are you aware of any noncompliance by the defendant?

MR. BHATIA: Not after that.

THE COURT: I am trying to understand -- look, I appreciate your views about the defendant, but what's the basis -- articulate for me why you think he is likely to flee?

I appreciate that the burden is on the defendant, but the burden is arguably met simply by the track record, which is that Mr. Teman has shown up; he has shown up despite of the distress that the note that we are all aware of reflected. The facts on the ground suggest that he is going to show up. Do you have his travel documents?

MR. BHATIA: I believe he has surrendered his passport, your Honor, yes.

THE COURT: All right, you believe he has surrendered his travel documents. Is there any reason to think he has

assets abroad?

MR. BHATIA: We don't, your Honor.

THE COURT: Is there any reason to believe he has any existing travel documents?

MR. BHATIA: No.

THE COURT: Is there any to believe he has friends or family abroad?

MR. BHATIA: I don't know one way or the other.

THE COURT: So, just articulate for me -- beyond the fact that he has now been convicted of this offense and that he is no fan of the customers whose testimony was presented against him, what's the reason to think he is not going to show up?

MR. BHATIA: Your Honor, at this point there is a substantial sentence, at least a guideline sentence -- there is a possibility of a substantial sentence awaiting the defendant, your Honor, and so we think that that is a substantially changed circumstance. And the defendant, as far as we know, doesn't have other financial ties that tie him to the United States, or that would require him to come to court, and so we think that at this point the defendant can't show by clear and convincing evidence that he will reappear.

THE COURT: What about the fact that he has shown up each time? I mean he was facing a substantial sentence. The evidence that you have offered is not different from what he

would have realistically expected.

You know, day in and day out he has been here. Why doesn't that clear the legal burden? I am asking you to explain to me why you're worried about Ari Teman not showing up.

MR. BHATIA: I think prior to trial the defendant had every expectation he would be acquitted, and I think the jury's verdict has changed that fact, and so I think at this point the possibility of a jail sentence has come into more stark relief.

THE COURT: Let me hear from defense counsel briefly on flight, and then we will turn to danger.

MR. DIRUZZO: Your Honor, we submit that Mr. Teman has always showed up; he has always complied. His compliance demonstrates, as your Honor has noted, that he is not a flight risk. It is true that Mr. Teman for better or worse does not have substantial assets. He is not that well healed, so to speak, so he can't give up as a security that which he does not have.

THE COURT: Let me ask you this. I mean this is a very light bail package and the circumstances have changed. Part of my job is to tailor any bail package to the needs of assuring his appearance. Surely he has somebody else who has moral suasion over him than Mr. Herman. Are there other potential signatories here?

MR. DIRUZZO: With the Court's indulgence.

THE COURT: Does he have parents, that kind of thing?

MR. DIRUZZO: Your Honor, we believe that Mr. Teman's college rabbi would be amenable to signing some type of bond to ensure Mr. Teman's appearance between now and sentencing.

THE COURT: What?

MR. DIRUZZO: To ensure Mr. Teman's appearance, that he doesn't leave.

THE COURT: Look, my inclination would be to intensify the conditions of release just to assure his appearance, and I'm trying to work through with you what the tools are in the tool box.

There is the possibility of electronic monitoring, and there is the possibility of another cosigner. I think you're representing to me that there is not a possibility of posting any security because Mr. Teman apparently doesn't have money, or so you represent.

MR. DIRUZZO: Yes, your Honor. But there is the possibility that Mr. Teman's college rabbi would be willing to sign.

THE COURT: We would need to obviously have the government have access to him to determine whether there is moral suasion, and if not that person there would be somebody else. Does Mr. Teman have parents?

MR. DIRUZZO: Yes, he does.

THE COURT: Would they be in a position to cosign?

MR. DIRUZZO: No, he has -- my understanding is he is estranged from his family.

THE COURT: Where does his family live?

MR. DIRUZZO: Unfortunately, his parents -- most of his cousins live in the States but his parents do live in Israel. And he hasn't talked to them for an extended period of time.

THE COURT: Does he have siblings?

MR. DIRUZZO: I believe he has one sister, but he is also estranged from his sister and hasn't spoken to her in quite some time. He is not exactly sure of her whereabouts.

We would submit, your Honor, that the possibility of perhaps an electronic monitor would be sufficient to alleviate any concerns that the prosecution or the Court may have.

THE COURT: Government, what about a revised bail package that puts in place intensified pretrial supervision, essentially electronic monitoring effective immediately by pretrial and adding a cosigner to sign the PRB? The idea would then be if there is any slip-up, you will be right back in here seeking remand, but at least I'm going step by step and not jumping to the conclusion that Mr. Teman is not going to appear.

MR. BHATIA: Your Honor, I think an intermediary ground might be home detention with electronic monitoring. I think that would allow the defendant -- that would allow to

ensure the defendant appear for sentencing.

THE COURT: Where is the defendant's home?

MR. BHATIA: The defendant, as I understand it, lives in Florida.

THE COURT: So, you're proposing home detention with electronic monitoring?

MR. BHATIA: That's right.

THE COURT: And I take it with leave to attend to medical appointments and the like and otherwise as approved by the pretrial services -- by pretrial services?

MR. BHATIA: That's correct.

THE COURT: All right. And what's your view about the addition of another signatory?

MR. BHATIA: I think an additional signatory would be appropriate. I think that makes sense. And if there were to be an additional signatory, then an increase in the bond value as well. Right now it's a $25,000 bond.

THE COURT: All right. Defense counsel, I understood, Mr. DiRuzzo, you to be fine with electronic monitoring. Often that goes with home detention; that's part of what makes electronic monitoring effective.

Obviously, electronic monitoring permits the subject to attend to medical appointments, and if there is another carve-out or two that you need me to put on the record, I can, otherwise it's usually left to the discretion of pretrial

services. What's your view about that?

MR. DIRUZZO: Just for clarity, medical and mental health, the full ambit, but yes.

THE COURT: All right. But with those carve-outs you're fine with that?

MR. DIRUZZO: Yes.

THE COURT: I mean what I'm concerned about, to be honest -- based on the little exchange I've had with you -- is the level of estrangement that Mr. Teman has from people who are usually close to a defendant. It's a circumstance that raises a natural concern about rootlessness.

Can you tell me something about his roots? In other words, are their anchors in his life? He doesn't have any money. It sounds like his job, therefore, must be in some degree of perilous shape. The members of his immediate yet family don't speak to him. Help me out here.

MR. DIRUZZO: With the court's indulgence, your Honor.

THE COURT: Yes.

MR. BHATIA: Your Honor, I just have one comment before you resume with defense counsel. My recollection is that Levy Herman might have been the individual who received the $4,000 check, the bank deposit from the scheme, as we alleged in the case.

THE COURT: Right.

MR. BHATIA: We wanted to flag that fact for your

Honor.

THE COURT: Duly flagged, but I'm not sure that changes anything. I mean --

MR. BHATIA: In addition, the fact that the defendant's parents are abroad also raises questions.

THE COURT: I am hearing you. I mean I am startled by the level of estrangement in the defendant's life, and that is a source of concern. I'm working through that with counsel to make sure that my outcome here is measured to the facts as they are emerging.

MR. GELFAND: Your Honor, just kind of backing up for a second, and just because we're on the record now I know that some of these brief at the time immaterial conversations had come out, but I have known Mr. Teman personally since freshman year of college. We have maintained a friendship since then. What I can represent is that he has built his own roots in New York and subsequently Florida -- in the Southern District of Florida, to be precise. He was fairly sick several years ago. During that time period, your Honor, his parents, he was estranged from them, they didn't come to see him, they didn't come to help him in any way. There is no relationship there, and as a practical matter he has built kind of a family environment for himself.

There is an individual rabbi KLar -- K-l-a-r -- and that individual's family -- who unremarkable at the time but in

a remarkable way had showed up to watch portions of this trial and to support Mr. Teman. They are kind of where Mr. Teman tends to go -- when bond conditions were not at issue -- for religious holidays.

THE COURT: That's in New York? That person is a New Yorker?

Mr. Teman, just in your legal interests, let me hear through counsel.

MR. GELFAND: The sons live in Manhattan, your Honor. The parents live in West Orange.

THE COURT: If I have a home detention with electronic monitoring, will he be in Florida or New York?

MR. GELFAND: Florida, your Honor, in his Miami apartment.

THE COURT: How is Mr. Teman affording the travel back and forth to New York and whatever hotel or stay arrangement he had during and in connection with the trial?

MR. GELFAND: Your Honor, to be candid, he has exhausted most of his resources, and so, as I understand it, he had some money saved up that's basically exhausted. He has been able to borrow some additional funds to just kind of pay the expenses, as I understand it, your Honor.

As a practical matter, I mean he is not going anywhere. He has fully been engaged with his defense. He came to St. Louis, to my office, with the Court's permission several

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weeks ago. I will represent, your Honor, something I have never done with any other client, he stayed at my house with my family. You know, he has known about the obvious possible consequences. Of course, we all hoped the verdict would come down a different way -- that goes without saying in any trial -- however, he is aware of the possible consequences, and obviously the process that the court will go through for sentencing. He has fully been engaged in his defense. He has been here every single time. He has been in regular contact with his pretrial services officer.

THE COURT: You're not aware of any breach of any condition of pretrial supervision.

MR. GELFAND: No, your Honor, I'm not. And on top of all of this there are pretty serious -- as the Court is aware -- mental health issues that are finally kind of under -- as much as mental health conditions can ever be totally under control, they are under control in the sense that he has a team of people and it seems to be working. I mean candidly we've noticed a difference since the note that we are all aware of, and more common contact in the weeks leading up to trial, and I would like him to continue with that for everyone's benefit, including obviously his own but not limited to his own.

THE COURT: All right. Does anyone have anything else to add?

MR. BHATIA: No, your Honor.

MR. GELFAND: No.

THE COURT: I think it is actually a closer question than I had first appreciated, but in the end Mr. Teman's consistent compliance with the terms of pretrial supervision, coupled with the Draconian consequences to him were he not to comply, allows me by a narrow margin to conclude that he has met his burden of showing by clear and convincing evidence that he is not a risk of flight.

That is contingent on certain conditions being imposed and subject to the conversation I'm about to have with the government about danger to the community. It seems to me to assure his appearance, I would make the following changes to the existing regimen.

Specifically, I will impose a condition of home detention with electronic monitoring, with leave of course to attend to medical and mental health appointments.

Second, I will ask that there be a second signatory to the existing $25,000 personal recognizance bond.

Government counsel, I don't think the difference between $25,000 and $50,000 is consequential here. $25,000 is still a lot of money, and somebody is not going to want to forego that. The central issue here is not between 25 and let us say $50,000. It turns on whether the individual in question is somebody who has moral suasion over Mr. Teman so that Mr. Teman would not want that person to lose that amount of money.

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So, I will add home detention with electronic monitoring, with carve-outs for medical and mental health appointments and otherwise as supervised by the probation department. And I will add the requirement of a second cosigner to the existing bond.

This is all contingent on my not being persuaded that there is a danger to the community.

Mr. Bhatia, you have an argument, I gather, you want to make as to that?

MR. BHATIA: Yes, your Honor. The danger to the community is with regard to the comments made about a victim as well as the comments made about the Court in the letter.

THE COURT: What comment did he make about the Court?

MR. BHATIA: There were comments in the note about the prosecutor and the Court. There is also the tweet that was right before trial.

THE COURT: The comments that I saw about the prosecutor were snarky and went to -- were jibes. Why is that a danger to the community? That's just juvenile speech.

MR. BHATIA: Your Honor, I think those are the facts we have, and I think on the defendant's burden I think it also contributes to the need for detention.

THE COURT: Is there any reason to think he is going to hurt somebody?

MR. BHATIA: No.

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THE COURT: Is there a reason to think he is going to defraud somebody?

MR. BHATIA: Your Honor, I think that's probably a closer call.

THE COURT: That's the issue here.

MR. BHATIA: I think we are aware of instances where we think the defendant has taken action against people who have sort of -- one moment, your Honor.

Your Honor, so I wanted to confer with Mr. Imperatore for a moment. As we mentioned in our grand jury letter, we are aware of other conduct that we believe is fraudulent.

THE COURT: Right.

MR. BHATIA: So that does give us pause. The defendant -- also as we heard at trial -- has hundreds of GateGuard customers, and so that gives him access.

THE COURT: Why isn't the right answer to say -- to add as a condition the defendant is not to create or deposit any remotely created check and is not to draw on any other person's credit card -- bill any other person's credit card without the express written permission of the pretrial services officer?

MR. BHATIA: I think that would be appropriate.

THE COURT: That should guard against the sort of mischief one would naturally be worried about, right?

MR. BHATIA: I think that's right. And I think we

would also ask for no new lines of credit and some of the other standard bail conditions.

THE COURT: Mr. Gelfand, that sounds reasonable, doesn't it?

MR. GELFAND: Yes, your Honor, it does. To be blunt, obviously Mr. Teman is well aware of the possible consequences of --

THE COURT: I understand that. But, look, because he doesn't want the bail to be revoked pending sentencing, if I am explicit that a condition of bail is the ones I just mentioned -- including no remotely created checks -- that gives him an extra determinable incentive.

MR. GELFAND: Yes, your Honor.

THE COURT: So what I am going to do is in addition to what I previous wrote is I'm going to write in the following: "Defendant is not to create or deposit any remotely created check. Defendant is not to" -- help me, Mr. Gelfand, with the right formulation to the use of credit cards. He presumably has credit cards from other people. I don't want him to hit those. I want to come up with the right formulation.

Mr. Gelfand?

MR. GELFAND: I think the way to go is my understanding is that with some historic business transactions there is kind of an infrastructure of what we understand is agreed upon but, in any event, essentially recurring automatic

credit card transactions.

What we would say is to give Mr. Teman a day or two to basically stop those from happening through I think it's PayPal or whatever the infrastructure is.

THE COURT: I am going to write "Defendant is to immediately terminate all auto pay" --

MR. GELFAND: And then we would ask that any such transactions be permissible upon written approval obtained between now and the time that the transaction occurs.

THE COURT: All right. "Defendant is to immediately terminate all auto pay credit card arrangements. Defendant" -- one moment -- "with him or any company" -- "any business with which he is affiliated."

I want to make it clear that this binds GateGuard and the other companies.

Mr. Gelfand, here is what I propose: "Defendant is not to create or deposit any remotely created check. Defendant is to immediately terminate all auto pay credit card arrangements with him or any business with which he is affiliated. Defendant may not invoice or bill any person or business without the written approval of his pretrial services officer."

It seems to me that that should protect against any potential fraud, while building in some flexibility and some ability to do business. But I am worried under the

circumstances here -- particularly given the financial need that is evident on the face of this case, and is evidence on the colloquy we've had -- I want to avoid any latitude -- assuming compliance with these conditions -- to rip somebody off.

MR. GELFAND: One second, your Honor?

THE COURT: Yes.

MR. GELFAND: I don't think this will move the needle one way or the other, but there is just a very practical impact on a word. Apparently PayPal's interface basically permits the immediate suspension of any sort of auto pay, and what we would ask is that he be ordered to immediately suspend, which effectively --

THE COURT: Why don't I say "suspend or terminate".

MR. GELFAND: Fair enough.

THE COURT: That's fine.

MR. GELFAND: And then could I request two unrelated --

THE COURT: "Immediately suspend or terminate." One moment. Go ahead.

MR. GELFAND: Your Honor, these are unrelated to that issue.

THE COURT: All right. Let me just finish that issue. Are we done with danger to the community? Anyone have anything else to add?

MR. BHATIA: Your Honor, on the bail, we wanted to get a representation from the defense, if possible, about the fact that Mr. Teman is only a United States citizen and does not have any other travel documents. I wasn't a part of the case when the initial bail conditions were set, so I'm not familiar.

THE COURT: Mr. Gelfand, I think that's a more than fair question. Is your client only an American citizen?

MR. GELFAND: Your Honor, my understanding is my client is only a U.S. citizen and that he has no travel documents other than the U.S. passport that was turned over.

THE COURT: I am going to ask that to Mr. Teman.

Mr. Teman, are you under oath. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: If you make a false statement in response to what I am about to say, that could subject you to penalties of perjury.

THE DEFENDANT: I understand.

THE COURT: Are you a citizen of any country other than the United States?

THE DEFENDANT: No, your Honor.

THE COURT: And have you surrender all of your travel documents including passports?

THE DEFENDANT: Yes, your Honor.

THE COURT: OK, very good.

I think, Mr. Bhatia, that does the trick. With that then -- again, finding it a close call -- I do find that Mr. Teman by clear and convincing evidence has shown me that subject to the rather muscular conditions I put in place he is not a danger to the community.

There is no basis other than speculation for me to assume that Mr. Teman could be a danger in any way other than in a financial or fraud way. There is no history. He hasn't been physically harming people or threatening people. I'm certainly aware that he has made provocative remarks to customers; he has engaged in juvenile speech; he has shown a vindictive streak, including a commentary about taking adverse action against people on days when they are deeply religious observant. None of this reflects well on him, but in the end none of it suggests an aptitude towards violence or anything like that. The real risk is that he would financially harm somebody. The conditions that I have read into the record a moment ago seems to me are sufficient safeguards against that conduct.

In the event there is a breach of any of those, Mr. Teman, be aware strict rules apply. If you breach any of these conditions, you can expect the government to move for your remand, and you can expect me to be receptive to such an application. Do you understand that?

MR. GELFAND: Yes, Judge.

THE COURT: Mr. Teman, do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Government, anything further?

MR. BHATIA: Nothing further.

THE COURT: All right.

MR. GELFAND: Your Honor, I'm sorry. Two quick issues that I would request the Court to include in its conditions.

Number one, my understanding is that his mental health and medical providers -- and I think he had actually referenced this to you early on in this case -- they basically have him doing several mile walks outside on a daily basis. I would ask that he be permitted to continue that.

THE COURT: Look, I've said defendant has leave to attend to medical and mental health appointments. I construe that to mean obligations that are ordered by such a professional.

MR. GELFAND: OK. And then the other issue -- which I think is already embedded in the pretrial conditions -- is I don't know whether this will be necessary, but permission to travel if necessary to St. Louis to meet with me in preparation for sentencing.

THE COURT: Why is that necessary?

MR. GELFAND: It's probably not.

THE COURT: Let's wait and see if it's necessary.

MR. GELFAND: OK.

THE COURT: I'm not averse to it, but it's a different type of representation than in connection with trial. My guess is between phone, Skype and your existing bond of friendship and trust, you can probably get a lot done remotely, but I'm disinclined to needlessly do that. Right now the travel restrictions are presumably the Southern District of New York and the Southern District of Florida.

MR. GELFAND: That's fine. And if we need anything more --

THE COURT: I'm sorry. Right now it's the Southern District and Eastern Districts of New York -- which includes our airports -- and the Southern District of Florida. If on an ad hoc basis you need leave for him to come visit you, I am certainly not inflexible.

MR. GELFAND: Understand.

THE COURT: Anything else with respect to bail?

MR. BHATIA: Nothing else.

THE COURT: Look, Mr. Teman, let me just speak to you directly. You know, you've got sentencing coming up in four plus months. How you behave, how you comply with the conditions of release, has potential consequences in terms of sentencing. It's an opportunity for you to demonstrate your ability to comply with the law, in particular the rules that I have set out as conditions of your release.

So, to begin with, if nothing else, your self interest

in making as good a presentation as you can in connection with sentencing should lead you to scrupulously comply with these conditions. Beyond that though there is the risk that if you don't comply, the government will move for your remand and I, if I find a breach, will grant that. That's the last place you want to be in. So, you are well advised to turn square corners here, and if you have any doubt about whether something is permissible, be in touch with your very able and dedicated counsel to guide you before you do something. Understood?

THE DEFENDANT: Yes, your Honor.

THE COURT: All right. I'm going to sign this. Anything else with respect to bail?

MR. BHATIA: No, your Honor.

THE COURT: All right. Now, in terms of the cosigner, I have given a week to get the second cosigner. Defense, what you should do is arrange for the government to meet that person soon so we don't need to adjourn that date.

Government, your role here is to determine whether the person has moral suasion, whether they are an appropriate cosigner, whether there is a risk to them of losing the $25,000. The fact that they may have had some business arrangement with the defendant may in some sense factor into the analysis. It's not clear to me that it makes the person less as opposed to a more suitable signatory. It would be surprising for a defendant to have a signatory with whom he had

A-1298

more detached -- more close ties -- and sometimes those include financial ones.

MR. BHATIA: Understood.

THE COURT: All right. Is there anything else I need to take up other than the grand jury subpoena?

MR. GELFAND: Logistically, just for within the Southern District of New York, as far as the ankle bracelet and things like that, where Mr. Teman has to go and when to get that? Florida?

THE COURT: I think he should report to pretrial right now, and they will guide him as to that. Pretrial is in 500 Pearl.

MR. GELFAND: OK.

THE COURT: Anything else other than the grand jury subpoena?

MR. BHATIA: No, your Honor.

MR. GELFAND: No, your Honor.

THE COURT: All right. So, we stand adjourned as it relates to the criminal case. We are now going to create a separate transcript.

(Trial concluded)

A-1298.1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

ARI TEMAN,

Defendant.

Verdict Sheet
S2 19 Cr. 696 (PAE)

All verdicts must be unanimous. Please indicate your verdict with a check mark (✓).

COUNT ONE:
Bank Fraud (April 2019 Checks)

GUILTY ✓ NOT GUILTY _____

COUNT TWO:
Bank Fraud (March 2019 Checks)

GUILTY ✓ NOT GUILTY _____

COUNT THREE:
Wire Fraud (April 2019 Checks)

GUILTY ✓ NOT GUILTY _____

COUNT FOUR:
Wire Fraud (March 2019 Checks)

GUILTY ✓ NOT GUILTY _____

A-1298.2

After completing the form, each juror must sign below, reflecting his or her agreement with the forgoing verdict.

Foreperson

Dated: 01/29/2020

JURY NOTE 9

A-1299

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
-v-	:	19-CR-696 (PAE)
ARI TEMAN,	:	ORDER
Defendant.	:	

PAUL A. ENGELMAYER, District Judge:

Attached to this Order are the following Court Exhibits:

- Exhibit 1: The draft jury charge dated January 27, 2020.
- Exhibit 2: The final jury charge dated January 27, 2020.
- Exhibit 3: The witness list.
- Exhibit 4: The exhibit list.
- Exhibit 5: The trial indictment.
- Exhibit 6: The verdict form.
- Exhibit 7: The Government's powerpoint presentation used during their closing argument.

SO ORDERED.

Dated: January 29, 2020
New York, New York

Paul A. Engelmayer
PAUL A. ENGELMAYER
United States District Judge

A-1300

EXHIBIT 1

A-1301

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
-v-	:	19 Cr. 696 (PAE)
ARI TEMAN,	:	
Defendant.	:	

JURY CHARGE

JANUARY 27, 2020
[DRAFT FOR COUNSEL'S REVIEW]

A-1302

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I. GENERAL INSTRUCTIONS

A. Introductory Remarks

Members of the jury, you have now heard all of the evidence in the case as well as the final arguments of the parties. You have paid careful attention to the evidence, and I am confident that you will act together with fairness and impartiality to reach a just verdict in the case.

Now it is time for me to instruct you as to the law that governs the case. There are three parts to these instructions. First, I'm going to give you some general instructions about your role, and about how you are to decide the facts of the case. These instructions really would apply to just about any trial. Second, I'll give you some specific instructions about the legal rules applicable to this particular case. Third, I'll give you some final instructions about procedure.

Listening to these instructions may not be easy. It is important, however, that you listen carefully and concentrate. I ask you for patient cooperation and attention. You'll notice that I'm reading these instructions from a prepared text. It would be more lively, no doubt, if I just improvised. But it's important that I not do that. The law is made up of words, and those words are very carefully chosen. So when I tell you the law, it's critical that I use exactly the right words.

You'll have copies of what I'm reading in the jury room to consult, so don't worry if you miss a word or two. But for now, listen carefully and try to concentrate on what I'm saying.

B. Role of the Court

My duty at this point is to instruct you as to the law. It is your duty to accept these instructions of law and to apply them to the facts as you determine them. With respect to legal matters, you must take the law as I give it to you. If any attorney has stated a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow. You must not substitute your own notions or opinions of what the law is or ought to be.

C. Role of the Jury

As members of the jury, you are the sole and exclusive judges of the facts. You pass upon the evidence. You determine the credibility of the witnesses. You resolve such conflicts as there may be in the testimony. You draw whatever reasonable inferences you decide to draw from the facts as you have determined them, and you determine the weight of the evidence.

Do not conclude from any of my questions or any of my rulings on objections or anything else I have done during this trial that I have any view as to the credibility of the witnesses or how you should decide the case.

It is your sworn duty, and you have taken the oath as jurors, to determine the facts. Any opinion I might have regarding the facts is of absolutely no consequence.

D. Role of Counsel

It is the duty of the attorneys to object when the other side offers testimony or other evidence that the attorney believes is not properly admissible. It is my job to rule on those objections. Therefore, why an objection was made or why I ruled on it the way I did is not your business. You should draw no inference from the fact that an attorney objects to any evidence. Nor should you draw any inference from the fact that I might have sustained or overruled an objection.

The personalities and the conduct of counsel in the courtroom are not in any way at issue. If you formed reactions of any kind to any of the lawyers in the case, favorable or unfavorable, whether you approved or disapproved of their behavior as advocates, those reactions should not enter into your deliberations.

From time to time, the lawyers and I had conferences out of your hearing. These conferences involved procedural and other matters, and none of the events relating to these conferences should enter into your deliberations at all.

E. Sympathy or Bias

Under your oath as jurors, you are not to be swayed by sympathy or prejudice. You are to be guided solely by the evidence in this case, and the crucial, bottom-line question that you must ask yourselves as you sift through the evidence is: has the Government proven the guilt of the defendant beyond a reasonable doubt?

It is for you alone to decide whether the Government has proven that the defendant is guilty of the crimes charged. You must decide solely on the basis of the evidence presented, subject to the law as I explain it to you. It must be clear to you that once you let fear or prejudice, or bias or sympathy interfere with your thinking, there is a risk that you will not arrive at a true and just verdict.

If you have a reasonable doubt as to the defendant's guilt, you should not hesitate for any reason to find a verdict of acquittal for the defendant. But on the other hand, if you should find that the Government has met its burden of proving the defendant's guilt beyond a reasonable doubt, you should not hesitate because of sympathy or any other reason to render a verdict of guilty for the defendant.

The question of possible punishment of the defendant is of no concern to the jury and should not enter into or influence your deliberations. The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine whether or not the defendant is guilty beyond a reasonable doubt, solely upon the basis of such evidence. Under your oath as jurors, you cannot allow a consideration of the punishment which

may be imposed upon the defendant, if he is convicted, to influence your verdict, in any way, or, in any sense, enter into your deliberations.

Similarly, it would be improper for you to allow any feelings you might have about the nature of the crime charged to interfere with your decision-making process. Your verdict must be based exclusively upon the evidence or the lack of evidence in the case.

F. All Persons Equal Before the Law

In reaching your verdict, you must remember that all parties stand equal before a jury in the courts of the United States. The fact that the Government is a party and the prosecution is brought in the name of the United States does not entitle the Government or its witnesses to any greater consideration than that accorded to any other party. By the same token, you must give it no less deference. The Government and the defendant stand on equal footing before you.

It would be improper for you to consider, in reaching your decision as to whether the Government sustained its burden of proof, any personal feelings you may have about the defendant's race, national origin, sex, or age. All persons are entitled to the same presumption of innocence, and the Government has the same burden of proof with respect to all persons. Your verdict must be based solely on the evidence or the lack of evidence.

G. Presumption of Innocence; Burden of Proof; Reasonable Doubt

Now, I will instruct you on the presumption of innocence—the Government's burden of proof in this case. The defendant has pleaded not guilty. By doing so, he denies the charges in the Indictment. Thus, the Government has the burden of proving the charges against him beyond a reasonable doubt. A defendant does not have to prove his innocence. On the contrary, he is presumed to be innocent of the charges contained in the Indictment. This presumption of innocence was in the defendant's favor at the start of the trial, continued in his favor throughout

the entire trial, is in his favor even as I instruct you now, and continues in his favor during the course of your deliberations in the jury room.

It is removed if and only if you, as members of the jury, are satisfied that the Government has sustained its burden of proving the guilt of the defendant beyond a reasonable doubt.

The question that naturally comes up is—what is a reasonable doubt? The words almost define themselves. It is a doubt founded in reason and arising out of the evidence in the case, or the lack of evidence. It is doubt that a reasonable person has after carefully weighing all the evidence. Reasonable doubt is a doubt that appeals to your reason, your judgment, your experience, your common sense. Reasonable doubt does not mean beyond all possible doubt. It is practically impossible for a person to be absolutely and completely convinced of any disputed fact which by its nature is not susceptible to mathematical certainty. In consequence, the law in a criminal case is that it is sufficient if the guilt of the defendant is established beyond a reasonable doubt, not beyond all possible doubt.

If, after a fair and impartial consideration of all the evidence, you are not satisfied of the guilt of the defendant, if you do not have an abiding conviction of the defendant's guilt—in sum, if you have such a doubt as would cause you, as prudent persons, to hesitate before acting in matters of importance to yourselves—then you have a reasonable doubt, and in that circumstance it is your duty to acquit the defendant.

On the other hand, if after a fair and impartial consideration of all the evidence you do have an abiding belief of the defendant's guilt—such a belief as you would be willing to act upon without hesitation in important matters in the personal affairs of your own life—then you have no reasonable doubt, and under such circumstances it is your duty to convict the defendant.

The Government is not required to prove the essential elements of an offense by any particular number of witnesses. The testimony of a single witness may be sufficient to convince you beyond a reasonable doubt of the existence of the essential elements of the offense you are considering if you believe that the witness has truthfully and accurately related what he has told you.

H. What Is and Is Not Evidence

In determining the facts, you must rely upon your own recollection of the evidence. The evidence in this case is the sworn testimony of the witnesses, the exhibits received in evidence, and the stipulations of the parties.

However, testimony that I have stricken or excluded is not evidence and may not be considered by you in rendering your verdict. Also, if certain testimony was received for a limited purpose, you must follow the limiting instructions I have given, and use the evidence only for the purpose I indicated.

The only exhibits that are evidence in this case are those that were received in evidence. Exhibits marked for identification but not admitted are not evidence, nor are materials that were used only to refresh a witness's recollection.

As I told you at the start of this case, statements and arguments by lawyers are not evidence, because the lawyers are not witnesses. What they have said to you in their opening statements and in their summations is intended to help you understand the evidence to reach your verdict. However, if your recollection of the facts differs from the lawyers' statements, it is your recollection that controls.

For the same reasons, you are not to consider a lawyer's questions as evidence. It is the witnesses' answers that are evidence, not the lawyers' questions.

Finally, any statements that I may have made do not constitute evidence. It is for you alone to decide the weight, if any, to be given to the testimony you have heard and the exhibits you have seen.

I. Direct and Circumstantial Evidence

Generally, as I mentioned at the start of the case, there are two types of evidence that you may consider in reaching your verdict. One type of evidence is direct evidence. Direct evidence is testimony by a witness about something he knows by virtue of his own senses—something he has seen, felt, touched, or heard. For example, if a witness testified that when he left his house this morning, it was raining, that would be direct evidence about the weather.

Circumstantial evidence is evidence from which you may infer the existence of certain facts. To use the same example I gave you at the start of trial, assume that when you came into the courthouse this morning the sun was shining and it was a nice day. Assume that the courtroom blinds were drawn and you could not look outside. As you were sitting here, someone walked in with an umbrella, which was dripping wet. Then a few minutes later another person entered with a wet raincoat. Now, you cannot look outside of the courtroom, and you cannot see whether or not it is raining. So you have no direct evidence of that fact. But, on the combination of facts that I have asked you to assume, it would be reasonable and logical for you to conclude that it had been raining.

That is all there is to circumstantial evidence. You infer on the basis of reason and experience and common sense from one established fact the existence or non-existence of some other fact.

As you can see, the matter of drawing inferences from facts in evidence is not a matter of guesswork or speculation. An inference is a logical, factual conclusion that you might reasonably

draw from other facts that have been proven. Many material facts—such as what a person was thinking or intending—can rarely be proved by direct evidence.

Circumstantial evidence is as valuable as direct evidence. The law makes no distinction between direct and circumstantial evidence, but simply requires that before convicting a defendant, the jury must be satisfied of a defendant's guilt beyond a reasonable doubt, based on all the evidence in the case, circumstantial and direct.

There are times when different inferences may be drawn from the evidence. The Government asks you to draw one set of inferences. The defendant asks you to draw another. It is for you, and for you alone, to decide what inferences you will draw.

J. Witness Credibility

You have had the opportunity to observe the witnesses. It is now your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of each witness and of the importance of his or her testimony.

You should carefully scrutinize all of the testimony of each witness, the circumstances under which each witness testified, the impression the witness made when testifying, the relationship of the witness to the controversy and the parties, the witness's bias or impartiality, the reasonableness of the witness's statement, the strength or weakness of the witness's recollection when viewed in the light of all other testimony, and any other matter in evidence that may help you decide the truth and the importance of each witness's testimony.

In other words, what you must try to do in deciding credibility is to size a witness up in light of his or her demeanor, the explanations given, and all of the other evidence in the case. You should use your common sense, your good judgment, and your everyday experiences in life to make your credibility determinations.

In passing upon the credibility of a witness, you may also take into account any inconsistencies or contradictions as to material matters in his or her testimony.

If you find that any witness has willfully testified falsely as to any material fact, you have the right to reject the testimony of that witness in its entirety. On the other hand, even if you find that a witness has testified falsely about one matter, you may reject as false that portion of his or her testimony and accept as true any other portion of the testimony which commends itself to your belief or which you may find corroborated by other evidence in this case. A witness may be inaccurate, contradictory, or even untruthful in some aspects, and yet be truthful and entirely credible in other aspects of his or her testimony.

The ultimate question for you to decide in passing upon credibility is: did the witness tell the truth before you? It is for you to say whether his or her testimony at this trial is truthful in whole or in part.

K. Bias of Witnesses

In deciding whether to believe a witness, you should specifically note any evidence of hostility or affection that the witnesses may have towards one of the parties. Likewise, you should consider evidence of any other interest or motive that the witness may have in cooperating with a particular party. You should also take into account any evidence of any benefit that a witness may receive from the outcome of the case.

It is your duty to consider whether the witness has permitted any such bias or interest to color his or her testimony. In short, if you find that a witness is biased, you should view his or her testimony with caution, weigh it with care, and subject it to close and searching scrutiny.

Of course, the mere fact that a witness is interested in the outcome of the case does not mean he or she has not told the truth. It is for you to decide from your observations and applying

your common sense and experience and all the other considerations mentioned whether the possible interest of any witness has intentionally or otherwise colored or distorted his or her testimony. You are not required to disbelieve an interested witness; you may accept as much of his or her testimony as you deem reliable and reject as much as you deem unworthy of acceptance.

L. Prior Inconsistent or Consistent Statements

You have heard evidence that, at some earlier time, witnesses have said or done something that counsel argues is inconsistent with their trial testimony.

Evidence of a prior inconsistent statement was placed before you not because it is itself evidence of the guilt or innocence of the defendant, but only for the purpose of helping you decide whether to believe the trial testimony of a witness who may have contradicted a prior statement. If you find that the witness made an earlier statement that conflicts with the witness's trial testimony, you may consider that fact in deciding how much of the witness's trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency; and whether that explanation appealed to your common sense.

It is exclusively your duty, based upon all the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and if so, how much, if any, weight to give to the inconsistent statement in determining whether to believe all, or part of, the witness's testimony.

You have also heard evidence that certain witnesses made earlier statements that were consistent with their trial testimony. Such statements were admitted into evidence not as

independent evidence of guilt or innocence, but solely for whatever light they may shed on the witness's credibility. If you find that a witness had a motive to testify as he did, but also that he told the same story before he had that motive, you may take that into account in deciding whether the witness's interest or motive colored his testimony.

M. Preparation of Witnesses

You have heard evidence during the trial that witnesses had discussed the facts of the case and their testimony with the lawyers before the witnesses appeared in court. Although you may consider that fact when you are evaluating a witness's credibility, I should tell you that there is nothing either unusual or improper about a witness meeting with lawyers before testifying, so that the witness can be made aware of the subjects that he or she will be questioned about, focus on those subjects, and have the opportunity to review relevant exhibits before being questioned about them. In fact, it would be unusual for a lawyer to call a witness without such consultation. Again, the weight you give to the fact or the nature of the witness's preparation for his or her testimony and what inferences you draw from such preparation are matters completely within your discretion.

N. Stipulations of Fact

In this case, you have heard evidence in the form of stipulations of fact. A stipulation of fact is an agreement between the parties that a certain fact is true. You must regard such agreed-upon facts as true. However, it is for you to determine the effect to be given to those facts.

O. Bank Records and Electronic Communications

Various bank records and other electronic communications, such as emails, have been admitted into evidence. I instruct you that this evidence was obtained in a lawful manner and that no one's rights were violated, and a party's use of this evidence is entirely lawful.

Therefore, regardless of any personal opinions you may have regarding the obtaining of such evidence, you must give this evidence full consideration along with all the other evidence in this case in determining whether the Government has proved the defendant's guilt beyond a reasonable doubt. What significance you attach to this evidence is entirely your decision.

P. Particular Investigative Techniques Not Required

During the trial, you have heard testimony of witnesses and argument by counsel that the Government did not utilize specific investigative techniques. You may consider these facts in deciding whether the Government has met its burden of proof, because as I told you, you should look to all of the evidence or lack of evidence in deciding whether the defendant is guilty. However, you also are instructed that there is no legal requirement that the Government use any of these specific investigative techniques to prove its case.

Whether you approve or disapprove of various law enforcement techniques, or whether you might have chosen to use or not use any particular technique, is not the question. Your concern, as I have said, is to determine whether or not, on the evidence or lack of evidence, the defendant's guilt has been proved beyond a reasonable doubt.

Q. Uncalled Witness—Equally Available

Both the Government and the defendant have the same power to subpoena witnesses to testify on their behalf. If a potential witness could have been called by the Government or by the defendant and neither called the witness, then you may draw the conclusion that the testimony of the absent witness might have been unfavorable to the Government or to the defendant or to both. On the other hand, it is equally within your province to draw no inference at all from the failure of either side to call a witness.

You should remember that there is no duty on either side to call a witness whose testimony would be merely cumulative of testimony already in evidence, or who would merely provide additional testimony to facts already in evidence. You should, however, remember my instruction that the law does not impose on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

R. Defendant's Testimony [if applicable]

Under our Constitution, a defendant has no obligation to testify or to present any evidence, because it is the Government's burden to prove a defendant's guilt beyond a reasonable doubt. A defendant is never required to prove that he is not guilty.

The defendant, Ari Teman, did testify in this case, and he was subject to cross-examination like any other witness. You should examine and evaluate his testimony just as you would the testimony of any other interested witness.

S. Defendant's Right Not to Testify [if applicable]

The defendant, Ari Teman, did not testify in this case. Under our Constitution, a defendant has no obligation to testify or to present any evidence, because it is the Government's burden to prove the defendant guilty beyond a reasonable doubt. That burden remains with the Government throughout the entire trial and never shifts to the defendant. A defendant is never required to prove that he is innocent.

You may not attach any significance to the fact that Mr. Teman did not testify. No adverse inference against him may be drawn by you because he did not take the witness stand. You may not consider this against him in any way in your deliberations.

II. SUBSTANTIVE INSTRUCTIONS

I will turn now to my instructions to you relating to the charges brought against the defendant in this case.

A. The Indictment

The defendant is formally charged in an Indictment. As I instructed you at the outset of this case, the Indictment is merely a charge or accusation. It is not evidence, and it does not prove or even indicate guilt. As a result, you are to give it no weight in deciding the defendant's guilt or lack of guilt. What matters is the evidence you heard at this trial. Indeed, as I have previously noted, the defendant is presumed innocent, and it is the prosecution's burden to prove the defendant's guilt beyond a reasonable doubt.

B. Summary of the Indictment

The Indictment contains four counts. Each count is a separate offense or crime. Each count must therefore be considered separately by you, and you must return a separate verdict on each count.

Counts One and Two of the Indictment charge the defendant with committing the offense of bank fraud. Count One charges him with a bank fraud scheme committed between in or about April 2019 up to and including in or about June 2019. Count Two charges him with a bank fraud scheme committed in or about March 2019.

Similarly, Counts Three and Four charge the defendant with two separate instances of wire fraud. Count Three charges him with a wire fraud scheme committed between in or about April 2019 up to and including in or about June 2019. Count Four charges him with committing a wire fraud scheme in or about March 2019.

I will now instruct you on the applicable law for each of the four counts.

C. Counts One and Two: Bank Fraud

As I said, Counts One and Two both charge the defendant with bank fraud, in violation of Title 18, United States Code, Section 1344. In other words, each count charges that the defendant devised a scheme to defraud a federally insured bank.

Count One charges the defendant with committing a bank fraud scheme in connection with the deposit in April 2019 of 27 checks, allegedly by creating, and then making the false pretense and representation to the bank that he had the account holders' authority to deposit, those checks. Count One of the Indictment reads:

> From at least in or about April 2019 up to and including at least in or about June 2019, in the Southern District of New York and elsewhere, ARI TEMAN, the defendant, willfully and knowingly, did execute and attempt to execute a scheme and artifice to defraud a financial institution, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and to obtain moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, such financial institution, by means of false and fraudulent pretenses, representations, and promises, to wit, TEMAN deposited counterfeit checks in the name of the three third parties (respectively, "Entity-1," "Entity-2," and "Entity-3") into an account held at a particular financial institution ("Financial Institution-1"), and subsequently attempted to and did use those funds for his personal benefit.

Count Two charges the defendant with committing a bank fraud scheme in connection with the deposit in March 2019 of two checks, again allegedly by creating, and then making the false pretense and representation to the bank that he had the account holders' authority to deposit, those checks. Count Two of the Indictment reads:

> In or about March 2019, in the Southern District of New York and elsewhere, ARI TEMAN, the defendant, willfully and knowingly, did execute and attempt to execute a scheme and artifice to defraud a financial institution, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and to obtain moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, such financial institution, by means of false and fraudulent pretenses, representations, and promises, to wit, TEMAN deposited counterfeit checks in the name of Entity-3 and another third party ("Entity-4") into an account held at Financial Institution-1, and subsequently attempted to and did use those funds for his personal benefit.

I instruct you that in connection with the Indictment, "Entity-1" refers to ABJ Milano LLC, operated by ABJ Properties; "Entity-2" refers to ABJ Lenox LLC, operated by ABJ Properties; "Entity-3" refers to 518 West 205 LLC, operated by Coney Realty; "Entity-4" refers to 18 Mercer Equity Inc., operated by Crystal Real Estate Management; and "Financial Institution-1" refers to Bank of America.

To find the defendant guilty of the crimes charged in Counts One and Two of the Indictment, the Government must establish each of the following elements beyond a reasonable doubt:

First, that there was a scheme or artifice to defraud a bank, as alleged in the Indictment; OR that there was a scheme or artifice to obtain money or other property owned by a financial institution by means of materially false or fraudulent pretenses, representations, or promises, as alleged in the Indictment;

Second, that the defendant knowingly and willfully executed or attempted to execute the scheme or artifice—that is, that the defendant acted with knowledge of the fraudulent nature of the scheme and with the specific intent to defraud the bank or to obtain, by deceiving the bank, money or other property owned or controlled by that bank; and

Third, that the deposits of the bank involved were, at the time of the scheme, insured by the Federal Deposit Insurance Corporation.

Now I will explain each of three elements of bank fraud in more detail.

1. Element One: Existence of Scheme

The first element that the Government must prove beyond a reasonable doubt is that, on or about the dates set forth in the Indictment, (1) there was a scheme or artifice to defraud a bank; OR (2) there was a scheme or artifice to obtain money or other property owned by or under the

custody or control of such a bank, by means of false or fraudulent pretenses, representations, or promises that were material to the scheme.

The Government must prove the existence of only one of these schemes. These two concepts are not necessarily mutually exclusive. If you find that either one type of scheme or artifice or both existed, then the first element of bank fraud is satisfied. However, you must be unanimous in your view as to the type of scheme or artifice that existed. If half of you think (1), but not (2), and the other half think (2), but not (1), then you must vote to acquit the defendant.

a. Scheme to Defraud a Bank

I will now explain what these terms mean and will begin with the key terms from (1), which requires the Government to prove beyond a reasonable doubt that there was a scheme or artifice to defraud a bank.

A "scheme or artifice" is a plan, device, or course of conduct to accomplish an objective.

"Fraud" is a general term. It is a term that includes all the possible means by which a person seeks to gain some unfair advantage over another person by false representations, false suggestions, false pretenses, or concealment of the truth. The unfair advantage sought can involve can involve money, property, or anything of value.

Thus, a "scheme to defraud" a bank is a pattern or course of conduct concerning a material matter designed to deceive a federally insured bank into releasing money or property, with the intent to cause the bank to suffer an actual or potential loss. This term—"scheme to defraud"—thus embraces all dishonest means, however ingenious, clever, or crafty, by which a person seeks to trick another out of their property. For example, a scheme to defraud may be accomplished through trickery, deceit, deception, or swindle.

The Government does not need to show that the defendant's conduct actually caused the bank to release money or property, but rather only needs to show that the defendant's conduct was designed to deceive the bank into releasing money or property.

This defines a scheme or artifice to defraud a bank, the first type of scheme prohibited by the federal bank fraud statute. You may find that a scheme to defraud existed only if the Government has proven beyond a reasonable doubt the existence of the scheme alleged in the Indictment, which I read to you a few moments ago.

b. Scheme to Obtain Money or Other Property Using False Pretenses

The second type of scheme charged, described at the beginning of this section as (2), is a scheme to obtain money or other property owned by, or under the custody and control of, a bank by means of false or fraudulent pretenses, representations, or promises. As to this type of scheme, the Government must show that false and fraudulent pretenses, representations, or promises were employed, and that they were directed at the bank with the intention of deceiving it.

This brings me to false and fraudulent pretenses, representations, or promises. A representation is fraudulent if it was made falsely with the intent to deceive. The deceptive means that are prohibited are not limited to active misrepresentations or lies told to the bank. Just as affirmatively stating facts as true when the facts are not true may constitute a false representation, the law recognizes that false representation need not be based on spoken words alone. The deception may arise from the intentional omission or concealment of facts that make what was written, said, or done deliberately misleading. The arrangement of the words, or the circumstances in which they are used, may convey a false and deceptive appearance. Accordingly, the misrepresentation may be written, oral, or arise from a course of conduct intended to communicate

false facts to the bank. If there is intentional deception, the manner in which it is accomplished does not matter.

These false representations must be "material," which is a term that I will define momentarily. In short, it does not matter whether any decision makers at the bank actually relied upon the misrepresentation. It is sufficient if the misrepresentation is one that is capable of influencing the bank's decision and is intended by the defendant to do so.

c. Concepts Applying to Both Schemes

Let me repeat again that there are two ways the Government may satisfy this first element beyond a reasonable doubt: first, by proving that there was a scheme to defraud a bank; or second, by proving that there was a scheme to obtain money or other property owned by, or under the custody or control of, the bank by false or fraudulent pretenses, representations, or promises.

I have referred, in the context of both ways the Government may satisfy this first element, to a "materiality" requirement. We use the word "material" to distinguish between the kinds of statements we care about and those that are of no real importance. A "material" fact is one which would reasonably be expected to be of concern to a reasonable and prudent person relying on the representation or statement in making a decision. This means that if you find a particular statement of fact made by the defendant to have been false, you must then determine whether that statement of fact was one that a reasonable person might have considered important in making his or her decision. The same principle applies to fraudulent half-truths or omissions of material facts.

The Government need not prove an actual loss of funds by the bank. Nor is it necessary for the Government to establish that the defendant actually realized any gain from the scheme. The success of a scheme to defraud is irrelevant. What matters is whether there existed a scheme

to defraud. The bank fraud statute prohibits successfully defrauding a financial institution as well as attempts to do so. You must concentrate on whether there was such a scheme.

It does not matter whether the bank involved might have discovered the fraud had it probed further, or been more careful. If you find that a scheme or artifice existed, it is irrelevant whether you believe that the bank was careless, gullible, or even negligent.

Finally, in order to establish the existence of a scheme, the Government is not required to establish that the defendant himself started the scheme to defraud. It is sufficient if you find that a scheme to defraud existed, even if initiated by another.

If you find that the Government has sustained its burden of proof that a scheme to defraud a bank or to obtain money by false pretenses did exist, as charged, you next should consider the second element.

2. Element Two: Knowing and Willful Participation in the Scheme

The second element that the Government must establish beyond a reasonable doubt is that the defendant executed or attempted to execute the scheme knowingly, willfully, and with the intent to defraud the bank, or to obtain money or other property owned by the bank or under the bank's custody or control.

A person acts "knowingly" when he acts voluntarily and deliberately, rather than mistakenly or inadvertently.

A person acts "willfully" when he acts knowingly and purposefully, with an intent to do something the law forbids, that is to say, with bad purpose either to disobey or disregard the law. It is not necessary that the defendant knew he was violating a particular law. It is enough if you find that he was aware that what he was doing was, in general, unlawful.

To act with "intent to defraud" means to act knowingly and with the specific intent to deceive, for the purpose of causing some financial loss to another.

The question of whether a person acted knowingly, willfully, and with intent to defraud is a question of fact for you to determine, like any other question of fact. Direct proof of knowledge and fraudulent intent is almost never available. It would be a rare case where it could be shown that a person wrote or stated that as of a given time in the past he committed an act with fraudulent intent. Such direct proof is not required.

Accordingly, the ultimate facts of knowledge and criminal intent may be established by circumstantial evidence, based upon a person's outward manifestations, his words, his conduct, his acts, all the surrounding circumstances disclosed by the evidence, and the rational or logical inferences that may be drawn from the evidence. Use your common sense. But regardless of whether you look to direct evidence, circumstantial evidence, or a combination thereof, the government must establish the essential elements of the crime charged beyond a reasonable doubt—including the requisite mental states.

The Government must prove beyond a reasonable doubt that the defendant participated in the alleged scheme with an understanding of its fraudulent or deceptive character and with the intent to help it succeed. There are certain things the Government need not prove in order to meet that burden. It need not prove that the defendant participated in, or even knew about, all the operations of the scheme. It need not prove that the defendant originated the scheme, or participated in it from its inception, since a person who participates in a scheme after it begins is just as guilty as those who participated from the beginning, as long as he becomes aware of the scheme's general purpose and operation and acts intentionally to further its unlawful goal or goals. It need not prove that the defendant participated in the scheme to the same degree as other

participants. Finally, the Government need not prove actual or potential loss to the bank, so long as there is evidence that the defendant intended to expose the bank to such loss.

3. Element Three: Federally Insured Financial Institution

The third and final element that the Government must prove beyond a reasonable doubt is that the bank that was the subject of the defendant's scheme or artifice was a federally insured financial institution. This simply means that the bank's deposits had to be insured by the Federal Deposit Insurance Corporation.

The Government need not show that the defendant knew that the bank in question was federally insured to satisfy this third element. It must prove, however, that the defendant intended to defraud a financial institution.

4. Attempt

The bank fraud statute prohibits not only successful defrauding of a financial institution, but also attempting, which means trying to do so. Thus, the Government is required to prove only that the defendant attempted, or tried, to execute the alleged scheme or artifice; there is no need for the Government to prove that the defendant was successful in this endeavor.

In order to prove that the defendant attempted bank fraud or wire fraud, the evidence must show beyond a reasonable doubt that (1) the defendant intended to commit the bank fraud, and (2) the defendant willfully took some action that was a substantial step in an effort to bring about or accomplish the crime.

Mere intention to commit a specific crime does not amount to an attempt. In order to convict the defendant of an attempt, you must find beyond a reasonable doubt both that he intended to commit the crime of bank fraud, and that he took some action that was a substantial step towards the commission of that crime.

Merely preparing to commit a crime is not the same thing as taking a substantial step toward the commission of the crime. The defendant must go beyond simply preparing and perform an act that confirms his intention to execute the scheme. The Government does not have to prove that the defendant did everything except take the last step necessary to complete the scheme. Any substantial step beyond mere preparation is enough.

D. Counts Three and Four: Wire Fraud

That concludes my review of the elements of bank fraud. I will now turn to Counts Three and Four, both of which charge the defendant with wire fraud, in violation of Title 18, United States Code, Section 1343.

Count Three charges the defendant with a wire fraud scheme in connection with the deposit in April 2019 of the 27 checks which are the subject of Count One, allegedly by creating, and then making the false pretense and representation to the bank that the defendant had the account holders' authorization to deposit, those checks. Count Three charges—and again I am reading from the Indictment—that:

> From at least in or about April 2019 up to and including at least in or about June 2019, in the Southern District of New York and elsewhere, ARI TEMAN, the defendant, willingly and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, TEMAN deposited counterfeit checks drawing on funds from accounts belonging to "Entity-1," "Entity-2," and "Entity-3" and subsequently attempted to and did use those funds for his personal benefit, and in furtherance of such a scheme caused a wire communication to be sent.

Count Four charges the defendant with a wire fraud scheme in connection with the deposit in March 2019 of the two checks which are the subject of Count Two, allegedly by creating, and then making the false pretense and representation to the bank that the defendant had the account

holders' authorization to deposit, those checks. Count Four charges—again reading from the Indictment—that:

> In or about March 2019, in the Southern District of New York and elsewhere, ARI TEMAN, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, TEMAN deposited counterfeit checks drawing funds from accounts belonging to Entity-3 and Entity-4 and subsequently attempted to and did use those funds for his personal benefit, and in furtherance of such a scheme caused a wire communication to be sent.

Earlier, I instructed you about who the terms "Entity-1," "Entity-2," "Entity-3," and "Entity-4," as used in Counts One and Two, refer to. Those instructions apply equally to Counts Three and Four.

I will now turn to the elements of wire fraud. In order to prove the defendant guilty of wire fraud in both Counts Three and Four, the Government must establish each of the following three elements beyond a reasonable doubt:

First, that there was a scheme or artifice to defraud, OR to obtain money or property by materially false or fraudulent pretenses, representations, or promises;

Second, that the defendant knowingly and willfully devised or participated in the scheme or artifice to defraud, with knowledge of the fraudulent nature of the scheme and with the specific intent to defraud; and

Third, in execution of that scheme, the defendant used or caused others to use interstate or foreign wires as specified in the Indictment.

My instructions as to Counts One and Two, the bank fraud counts, cover a number of the concepts relevant to Counts Three and Four. And so, my instructions as to Counts Three and Four will be brief.

1. Element One: A Scheme to Defraud

The first element that the Government must prove, beyond a reasonable doubt, is that there was a scheme to defraud or to obtain money or property. I have already instructed you in connection with Counts One and Two what it means to employ a scheme or artifice to defraud. Those instructions apply here as well.

The scheme that the Government alleges in Count Three is the same scheme involving the defendant's depositing of 27 checks in April 2019, which is the subject of Count One. To find the first element as to Count Three, you must therefore find that the scheme had as an object the use of the funds from these checks for the defendant's personal benefit.

Similarly, the scheme the Government alleges in Count Four is the same scheme involving the defendant's depositing of 2 checks in March 2019, which is the subject of Count Two. To find the first element as to Count Four, you must therefore find that the scheme had as an object the use of the funds from these checks for the defendant's personal benefit.

2. Element Two: Knowing and Willful Participation in the Scheme

The second element that the Government must prove, beyond a reasonable doubt, is that the defendant devised or participated in the scheme knowingly, willfully, and with a specific intent to defraud. I have already defined knowingly, willfully, and with a specific intent to defraud, and my earlier instructions apply here as well. I will quickly define a few additional terms as to this element.

To "devise" a scheme to defraud is to concoct or plan it.

To "participate" in a scheme to defraud means to associate oneself with it, with the intent of making it succeed.

3. Element Three: Use of Interstate Wires

The third and final element of the wire fraud charge is that the Government must establish beyond a reasonable doubt that interstate or foreign wires were used in furtherance of the scheme to defraud.

"Wires" includes telephone calls, faxes, email, Internet, radio, or television communication. The use of the wires must be between states or between the United States and another country. The wire communication must pass between two or more states as, for example, a telephone call between New York and New Jersey; or it must pass between the United States and a foreign country, such as a telephone call between New York and London. The Government is not required, however, to prove that a defendant knew or could foresee the interstate or international nature of the wire communication.

The use of the wires need not itself be fraudulent. Stated another way, the communication need not contain any fraudulent representation. To be in furtherance of the scheme, the wire communication must be incident to an essential part of the scheme to defraud and must have been caused by the defendant. It is sufficient if the wires were used to further or assist in carrying out the scheme to defraud or the scheme to obtain money by means of false representations.

It is not necessary for the defendant to be directly or personally involved in any wire communication, as long as the communication is reasonably foreseeable in the execution of the alleged scheme to defraud in which the defendant is accused of participating. In this regard, it is sufficient to establish this element of the crime if the evidence justifies a finding that the defendant caused the wires to be used by others. This does not mean that the defendant must have specifically authorized others to execute a wire communication. Rather, when one does an act with knowledge that the use of the wires will follow in the ordinary course of business, or where such use of the

wires can reasonably be foreseen, even if not actually intended, then he causes the wires to be used.

The Government must prove beyond a reasonable doubt the particular use of the wires on which the Indictment is based. Here, the wire fraud counts are based on wire communications related to the defendant's depositing of alleged counterfeit checks. To convict the defendant on Counts Three and Four, you must unanimously agree on a particular one of these wires and that it was in furtherance of the charged wire-fraud scheme.

However, the Government does not have to prove that the wire was used on the exact date charged. It is sufficient if the evidence establishes beyond a reasonable doubt that the wires were used on a date reasonably near the date alleged.

E. Unanimity

This concludes my review of the elements of wire fraud. I have a few final substantive instructions that are not particular to a specific count.

The first relates to the requirement that the jury verdict be unanimous.

Each of the four counts in the Indictment charges the defendant with an offense—either bank fraud or wire fraud—involving multiple checks drawn on the accounts of multiple entities. Thus, Counts One and Three allege these respective offenses in connection with the defendant's alleged deposit of 27 checks, each drawn on the account of one of three entities: ABJ Milano LLC; ABJ Lenox LLC; and 518 West 205 LLC. And Counts Two and Four allege these respective offenses in connection with the defendant's alleged deposit of two checks, one drawn on the account of 518 West 205 LLC; and the other drawn on the account of 18 Mercer Equity Inc.

As to each count, I instruct you that the Government need not prove, and you need not find, that the elements of the offense in question have been met with respect to each of the checks or

each of the entities to which that count relates. However, to convict the defendant of a particular count, you must unanimously agree that the elements of the offense in question have been established, beyond a reasonable doubt, with respect to at least one entity to which that count relates. So, for example, on Count Two, you may not return a verdict of guilty unless you unanimously agree that the elements of bank fraud have been established with respect to one of the two entities, 518 West 205 LLC or 18 Mercer Equity Inc., to which that count relates. If half of the jury found that the elements of bank fraud had been established with respect to the check drawn on the account of 518 West 205 LLC, and the other half of the jury found that the elements of bank fraud had been established with respect to 18 Mercer Equity Inc., but the jury was not in unanimous agreement as to either entity, you could not return a verdict of guilty.

F. Good Faith

An essential element of the crimes of bank fraud and wire fraud as charged in Counts One through Four of the Indictment is intent to defraud. It follows that good faith on the part of the defendant is an absolute defense to a charge of fraud. The burden of establishing lack of good faith and criminal intent rests upon the prosecution. A defendant is under no burden to prove his good faith; rather, the prosecution must prove bad faith or knowledge of falsity beyond a reasonable doubt.

Under the bank fraud and wire fraud statutes, even false representations or statements or omissions of material facts do not amount to a fraud unless done with fraudulent intent. However misleading or deceptive a plan may be, it is not fraudulent if it was devised or carried out in good faith. If the defendant believed in good faith that he was acting properly, even if he was mistaken in that belief, and even if others were injured by his conduct, there is no crime.

A venture commenced in good faith may become fraudulent if it is continued after a fraudulent intent has been formed. Therefore, good faith is no defense when the defendant first made representations in good faith but later, during the time charged in the Indictment, the defendant realized that the representations were false and nevertheless deliberately continued to make them. You must review and put together all the circumstances in deciding whether or not it has been established beyond a reasonable doubt that the defendant devised or participated in a scheme to defraud knowingly, willfully, and with the intent to defraud, or whether he acted in good faith.

There is a final consideration to bear in mind in deciding whether or not the defendant acted in good faith. You are instructed that if the defendant participated in the scheme to defraud, then a belief by the defendant, if such a belief existed, that ultimately everything would work out so that no one would lose any money does not require a finding by you that he acted in good faith. If the defendant participated in the scheme for the purpose of causing financial or property loss to another, then no amount of honest belief on the part of the defendant that the scheme will cause ultimately make a profit or cause no harm will excuse fraudulent actions or false representations by him.

G. Advice of Counsel

You have heard evidence that the defendant received advice from a lawyer, Ariel Reinitz. You may consider that evidence in deciding whether the defendant acted knowingly, willfully, and with a specific intent to defraud.

The mere fact that the defendant may have received legal advice does not, in itself, necessarily constitute a complete defense to the charges of bank fraud and wire fraud. Instead, you must ask yourselves whether the defendant honestly and in good faith sought the advice of a

competent lawyer as to what he may lawfully do; whether he fully and honestly laid all the facts before his lawyer; and whether in good faith he honestly followed such advice, relying on it and believing it to be correct. In short, you should consider whether, in seeking and obtaining advice from a lawyer, the defendant intended that his acts shall be lawful. If he did so, it is the law that a defendant cannot be convicted of a crime that involves willful and unlawful intent, even if such advice were an inaccurate construction of the law.

On the other hand, no man can willfully and knowingly violate the law and excuse himself from the consequences of his conduct by pleading that he followed the advice of his lawyer.

Whether the defendant acted in good faith for the purpose of seeking guidance as to the specific acts in this case, and whether he made a full and complete report to his lawyer, and whether he acted substantially in accordance with the advice received, are questions for you to determine.

H. Conscious Avoidance

I told you earlier that the defendant must have acted knowingly, as I have defined that term, in order to be convicted. That is true with respect to all four counts charged in the Indictment. In determining whether the defendant acted knowingly, you may consider whether the defendant closed his eyes to what would have otherwise been obvious to him. That is what the phrase "conscious avoidance" refers to.

As I have told you before, acts done knowingly must be a product of a person's conscious intention. They cannot be the result of carelessness, negligence, or foolishness. But a person may not intentionally remain ignorant of a fact that is material and important to his conduct in order to escape the consequences of the criminal law.

Here, the Government argues that the defendant consciously avoided material information insofar as he did not invoice or otherwise notify his customers, in advance of his drawing and

depositing checks on their accounts in March and April 2019, of his claim that they owed his business money in the amounts reflected on those checks. The Government alleges that the defendant was thereby closing his eyes to the fact that the customers did not approve and would not have approved these charges. The defendant disputes that he consciously avoided learning such information. He argues that he believed in good faith that the customers had given him advance approval for these charges, and also advance approval to remotely create checks on their accounts as a means of paying the debts that they owed him.

As to this point, I instruct you as follows. An argument by the Government of conscious avoidance is not a substitute for proof of knowledge; it is simply another factor that you, the jury, may consider in deciding what the defendant knew. Thus, if you find beyond a reasonable doubt that the defendant was aware that there was a high probability that a fact was so, but that the defendant deliberately avoided confirming this fact, such as by purposely closing his eyes to it or intentionally failing to investigate it, then you may treat this deliberate avoidance of positive knowledge as the equivalent of knowledge.

In sum, if you find that the defendant believed there was a high probability that a fact was so and that the defendant deliberately and consciously avoided learning the truth of that fact, you may find that the defendant acted knowingly with respect to that fact. However, if you find that the defendant actually believed the fact was not so, then you may not find that he acted knowingly with respect to that fact. You must judge from all the circumstances and all the proof whether the Government did or did not satisfy its burden of proof beyond a reasonable doubt.

I. Variance in Dates and Amounts

The Indictment refers to a range of dates and monetary amounts. I instruct you that it does not matter if a specific event is alleged to have occurred on or about a certain date, but the

testimony indicates that in fact it was a different date. Likewise, it does not matter if a transaction is alleged to have involved a certain amount of money, but the testimony indicates that in fact it was a different amount of money. The law requires only a substantial similarity between the dates and amounts alleged in the Indictment and the dates and amounts established by the evidence.

J. False Exculpatory Statements

You have heard testimony that the defendant made statements in which he claimed that his conduct was consistent with innocence and not with guilt. The Government claims that these statements in which the defendant exculpated himself are false.

If you find that the defendant gave a false statement in order to divert suspicion from himself, you may infer, but you are not required to infer, that the defendant believed that he was guilty. You may not, however, infer on the basis of this alone that the defendant is, in fact, guilty of the crimes for which he is charged.

Whether or not the evidence as to the defendant's statements shows that the defendant believed that he was guilty, and the significance, if any, to be attached to any such evidence, are matters for you, the jury, to decide.

K. Venue

In addition to the elements I have described for you, in order to convict on each charged offense, you must decide whether the crime occurred within the Southern District of New York. The Southern District of New York includes Manhattan, the Bronx, Westchester County, as well as other areas. In this regard, the Government need not prove that the crime was committed in its entirety in this District or that the defendant himself was present here. It is sufficient to satisfy this element if any act in furtherance of the crime occurred in this District. The act itself may not be a criminal act. It could include, for example, executing a financial transaction within this District.

And the act need not have been taken by the defendant, so long as the act was part of the crime that you find the defendant committed.

I should note that on this issue—and this issue alone—the Government need not offer proof beyond a reasonable doubt. Venue need be proven only by a preponderance of the evidence. The Government has satisfied its venue obligations, therefore, if you conclude that it is more likely than not that the crime occurred within this District.

If you find that the Government has failed to prove this venue requirement, you must acquit the defendant of these charges.

III. DELIBERATIONS OF THE JURY

A. Right to See Exhibits and Hear Testimony

Ladies and gentlemen of the jury, that concludes the substantive portion of my instructions to you. You are about to go into the jury room and begin your deliberations. If during those deliberations you want to see any of the exhibits, you may request that they be brought into the jury room. If you want any of the testimony read, you may also request that. Please remember that it is not always easy to locate what you might want, so be as specific as you possibly can in requesting exhibits or portions of the testimony. And please be patient—with respect to requests for testimony, it can sometimes take counsel and the Court some time to identify the portions that are responsive to your request. If you want any further explanation of the law as I have explained it to you, you may also request that.

To assist you in your deliberations, I am providing you with a list of witnesses, in the order in which they testified; a list of exhibits; a verdict form, which I will discuss in a moment; and a copy of these instructions. There is one of each of these for each juror. I am also providing you with a copy of the Indictment. I remind you that the Indictment is not evidence.

B. Communication with the Court

Your requests for exhibits or testimony—in fact any communications with the Court—should be made to me in writing, signed by your foreperson, and given to one of the marshals. In any event, do not tell me or anyone else how the jury stands on any issue until after a unanimous verdict is reached.

C. Notes

Some of you have taken notes periodically throughout this trial. I want to emphasize to you, as you are about to begin your deliberations, that notes are simply an aid to memory. Notes that any of you may have made may not be given any greater weight or influence than the recollections or impressions of other jurors, whether from notes or memory, with respect to the evidence presented or what conclusions, if any, should be drawn from such evidence. All jurors' recollections are equal. If you can't agree on what you remember the testimony to have been, you can ask to have the transcript read back.

D. Duty to Deliberate; Unanimous Verdict

You will now retire to decide the case. Your function is to weigh the evidence in this case and to determine the guilt or lack of guilt of the defendant with respect to the count charged in the Indictment. You must base your verdict solely on the evidence and these instructions as to the law, and you are obliged on your oath as jurors to follow the law as I instruct you, whether you agree or disagree with the particular law in question.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement. Each of you must decide the case for himself or herself, but you should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. Discuss and weigh your respective opinions

dispassionately, without regard to sympathy, without regard to prejudice or favor for either party, and adopt that conclusion which in your good conscience appears to be in accordance with the truth.

When you are deliberating, all 12 jurors must be present in the jury room. If a juror is absent, you must stop deliberations.

Again, your verdict must be unanimous, but you are not bound to surrender your honest convictions concerning the effect or weight of the evidence for the mere purpose of returning a verdict or solely because of the opinion of other jurors. Each of you must make your own decision about the proper outcome of this case based on your consideration of the evidence and your discussions with your fellow jurors. No juror should surrender his or her conscientious beliefs solely for the purpose of returning a unanimous verdict.

Remember at all times, you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

If you are divided, do not report how the vote stands. If you reach a verdict do not report what it is until you are asked in open court.

E. Verdict Form

I have prepared a verdict form for you to use in guiding your deliberation and recording your decision. Please use that form to report your verdict.

F. Duties of Foreperson

Finally, I referred a moment ago to a foreperson. The first thing you should do when you retire to deliberate is take a vote to select one of you to sit as your foreperson, and then send out a note indicating whom you have chosen.

The foreperson doesn't have any more power or authority than any other juror, and his or her vote or opinion doesn't count for any more than any other juror's vote or opinion. The foreperson is merely your spokesperson to the Court. He or she will send out any notes, and when the jury has reached a verdict, he or she will notify the marshal that the jury has reached a verdict, and you will come into open court and give the verdict.

G. Return of Verdict

After you have reached a verdict, your foreperson will fill in and date the form that has been given to you. All jurors must sign the form reflecting each juror's agreement with the verdict. The foreperson should then advise the marshal outside your door that you are ready to return to the courtroom.

I will stress that each of you must be in agreement with the verdict which is announced in court. Once your verdict is announced by your foreperson in open court and officially recorded, it cannot ordinarily be revoked.

In conclusion, ladies and gentlemen, I am sure that if you listen to the views of your fellow jurors and if you apply your own common sense, you will reach a fair verdict here.

IV. CONCLUSION

Members of the jury, that concludes my instructions to you. I will ask you to remain seated while I confer with the attorneys to see if there are any additional instructions that they would like to have me give to you or anything I may not have covered in my previous statement.

* * * * *

Before you retire into the jury room I must excuse our two alternates with the thanks of the Court. You have been very attentive and very patient. I'm sorry that you will miss the experience of deliberating with the jury, but the law provides for a jury of 12 persons in this case. So before

the rest of the jury retires into the jury room, if you have any clothing or objects there, you are asked to pick them up and to withdraw before any deliberations start.

Please do not discuss the case with anyone, or research the case, over the next few days. It is possible, and I have had this occur in a trial, that unexpected developments such as a juror's serious illness, may require the substitution of a deliberating juror by an alternate. And so it's vital that you not speak to anyone about the case or research the case until you have been notified that the jury's deliberations are over and the jury has been excused. And if you would like to be advised of the outcome of the trial, please make sure that Mr. Smallman has a phone number at which you can be reached.

(Alternates excused)

Members of the jury, you may now retire. The marshal will be sworn before we retire.

(Marshal sworn)

A-1341

EXHIBIT 2

A-1342

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
-v-	:	S2 19 Cr. 696 (PAE)
ARI TEMAN,	:	
Defendant.	:	

JURY CHARGE

JANUARY 27, 2020
[FINAL]

A-1343

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I. GENERAL INSTRUCTIONS

A. Introductory Remarks

Members of the jury, you have now heard all of the evidence in the case as well as the final arguments of the parties. You have paid careful attention to the evidence, and I am confident that you will act together with fairness and impartiality to reach a just verdict in the case.

Now it is time for me to instruct you as to the law that governs the case. There are three parts to these instructions. First, I'm going to give you some general instructions about your role, and about how you are to decide the facts of the case. These instructions really would apply to just about any trial. Second, I'll give you some specific instructions about the legal rules applicable to this particular case. Third, I'll give you some final instructions about procedure.

Listening to these instructions may not be easy. It is important, however, that you listen carefully and concentrate. I ask you for patient cooperation and attention. You'll notice that I'm reading these instructions from a prepared text. It would be more lively, no doubt, if I just improvised. But it's important that I not do that. The law is made up of words, and those words are very carefully chosen. So when I tell you the law, it's critical that I use exactly the right words.

You'll have copies of what I'm reading in the jury room to consult, so don't worry if you miss a word or two. But for now, listen carefully and try to concentrate on what I'm saying.

B. Role of the Court

I have instructed you during the trial as to various matters, and you should of course continue to follow those instructions. My duty at this point is to instruct you as to the law. It is your duty to accept these instructions of law and to apply them to the facts as you determine them. With respect to legal matters, you must take the law as I give it to you. If any attorney has stated a legal principle different from any that I state to you in my instructions, it is my instructions that

you must follow. You must not substitute your own notions or opinions of what the law is or ought to be.

C. Role of the Jury

As members of the jury, you are the sole and exclusive judges of the facts. You pass upon the evidence. You determine the credibility of the witnesses. You resolve such conflicts as there may be in the testimony. You draw whatever reasonable inferences you decide to draw from the facts as you have determined them, and you determine the weight of the evidence.

Do not conclude from any of my questions or any of my rulings on objections or anything else I have done during this trial that I have any view as to the credibility of the witnesses or how you should decide the case.

It is your sworn duty, and you have taken the oath as jurors, to determine the facts. Any opinion I might have regarding the facts is of absolutely no consequence.

D. Role of Counsel

It is the duty of the attorneys to object when the other side offers testimony or other evidence that the attorney believes is not properly admissible. It is my job to rule on those objections. Therefore, why an objection was made or why I ruled on it the way I did is not your business. You should draw no inference from the fact that an attorney objects to any evidence. Nor should you draw any inference from the fact that I might have sustained or overruled an objection.

The personalities and the conduct of counsel in the courtroom are not in any way at issue. If you formed reactions of any kind to any of the lawyers in the case, favorable or unfavorable, whether you approved or disapproved of their behavior as advocates, those reactions should not enter into your deliberations.

From time to time, the lawyers and I had conferences out of your hearing. These conferences involved procedural and other matters, and none of the events relating to these conferences should enter into your deliberations at all.

E. Sympathy or Bias

Under your oath as jurors, you are not to be swayed by sympathy or prejudice. You are to be guided solely by the evidence in this case, and the crucial, bottom-line question that you must ask yourselves as you sift through the evidence is: has the Government proven the guilt of the defendant beyond a reasonable doubt?

It is for you alone to decide whether the Government has proven that the defendant is guilty of the crimes charged. You must decide solely on the basis of the evidence presented, subject to the law as I explain it to you. It must be clear to you that once you let fear or prejudice, or bias or sympathy interfere with your thinking, there is a risk that you will not arrive at a true and just verdict.

If you have a reasonable doubt as to the defendant's guilt, you should not hesitate for any reason to find a verdict of acquittal for the defendant. But on the other hand, if you should find that the Government has met its burden of proving the defendant's guilt beyond a reasonable doubt, you should not hesitate because of sympathy or any other reason to render a verdict of guilty for the defendant.

The question of possible punishment of the defendant is of no concern to the jury and should not enter into or influence your deliberations. The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine whether or not the defendant is guilty beyond a reasonable doubt, solely upon the basis of such evidence. Under your oath as jurors, you cannot allow a consideration of the punishment which

may be imposed upon the defendant, if he is convicted, to influence your verdict, in any way, or, in any sense, enter into your deliberations.

Similarly, it would be improper for you to allow any feelings you might have about the nature of the crime charged to interfere with your decision-making process. Your verdict must be based exclusively upon the evidence or the lack of evidence in the case.

F. All Persons Equal Before the Law

In reaching your verdict, you must remember that all parties stand equal before a jury in the courts of the United States. The fact that the Government is a party and the prosecution is brought in the name of the United States does not entitle the Government or its witnesses to any greater consideration than that accorded to any other party. By the same token, you must give it no less deference. The Government and the defendant stand on equal footing before you.

It would be improper for you to consider, in reaching your decision as to whether the Government sustained its burden of proof, any personal feelings you may have about the defendant's race, national origin, sex, or age. All persons are entitled to the same presumption of innocence, and the Government has the same burden of proof with respect to all persons. Your verdict must be based solely on the evidence or the lack of evidence.

G. Presumption of Innocence; Burden of Proof; Reasonable Doubt

Now, I will instruct you on the presumption of innocence—the Government's burden of proof in this case. The defendant has pleaded not guilty. By doing so, he denies the charges in the Indictment. Thus, the Government has the burden of proving the charges against him beyond a reasonable doubt. A defendant does not have to prove his innocence. On the contrary, he is presumed to be innocent of the charges contained in the Indictment. This presumption of innocence was in the defendant's favor at the start of the trial, continued in his favor throughout

the entire trial, is in his favor even as I instruct you now, and continues in his favor during the course of your deliberations in the jury room.

It is removed if and only if you, as members of the jury, are satisfied that the Government has sustained its burden of proving the guilt of the defendant beyond a reasonable doubt.

The question that naturally comes up is—what is a reasonable doubt? The words almost define themselves. It is a doubt founded in reason and arising out of the evidence in the case, or the lack of evidence. It is doubt that a reasonable person has after carefully weighing all the evidence. Reasonable doubt is a doubt that appeals to your reason, your judgment, your experience, your common sense. Reasonable doubt does not mean beyond all possible doubt. It is practically impossible for a person to be absolutely and completely convinced of any disputed fact which by its nature is not susceptible to mathematical certainty. In consequence, the law in a criminal case is that it is sufficient if the guilt of the defendant is established beyond a reasonable doubt, not beyond all possible doubt.

If, after a fair and impartial consideration of all the evidence, you are not satisfied of the guilt of the defendant, if you do not have an abiding conviction of the defendant's guilt—in sum, if you have such a doubt as would cause you, as prudent persons, to hesitate before acting in matters of importance to yourselves—then you have a reasonable doubt, and in that circumstance it is your duty to acquit the defendant.

On the other hand, if after a fair and impartial consideration of all the evidence you do have an abiding belief of the defendant's guilt—such a belief as you would be willing to act upon without hesitation in important matters in the personal affairs of your own life—then you have no reasonable doubt, and under such circumstances it is your duty to convict the defendant.

The Government is not required to prove the essential elements of an offense by any particular number of witnesses. The testimony of a single witness may be sufficient to convince you beyond a reasonable doubt of the existence of the essential elements of the offense you are considering if you believe that the witness has truthfully and accurately related what he has told you.

H. What Is and Is Not Evidence

In determining the facts, you must rely upon your own recollection of the evidence. The evidence in this case is the sworn testimony of the witnesses, the exhibits received in evidence, and the stipulations of the parties.

However, testimony that I have stricken or excluded is not evidence and may not be considered by you in rendering your verdict. Also, if certain testimony was received for a limited purpose, you must follow the limiting instructions I have given, and use the evidence only for the purpose I indicated.

The only exhibits that are evidence in this case are those that were received in evidence. Exhibits marked for identification but not admitted are not evidence, nor are materials that were used only to refresh a witness's recollection.

As I told you at the start of this case, statements and arguments by lawyers are not evidence, because the lawyers are not witnesses. What they have said to you in their opening statements and in their summations is intended to help you understand the evidence to reach your verdict. However, if your recollection of the facts differs from the lawyers' statements, it is your recollection that controls.

For the same reasons, you are not to consider a lawyer's questions as evidence. It is the witnesses' answers that are evidence, not the lawyers' questions.

Finally, any statements that I may have made do not constitute evidence. It is for you alone to decide the weight, if any, to be given to the testimony you have heard and the exhibits you have seen.

I. Direct and Circumstantial Evidence

Generally, as I mentioned at the start of the case, there are two types of evidence that you may consider in reaching your verdict. One type of evidence is direct evidence. Direct evidence is testimony by a witness about something he knows by virtue of his own senses—something he has seen, felt, touched, or heard. For example, if a witness testified that when he left his house this morning, it was raining, that would be direct evidence about the weather.

Circumstantial evidence is evidence from which you may infer the existence of certain facts. To use the same example I gave you at the start of trial, assume that when you came into the courthouse this morning the sun was shining and it was a nice day. Assume that the courtroom blinds were drawn and you could not look outside. As you were sitting here, someone walked in with an umbrella, which was dripping wet. Then a few minutes later another person entered with a wet raincoat. Now, you cannot look outside of the courtroom, and you cannot see whether or not it is raining. So you have no direct evidence of that fact. But, on the combination of facts that I have asked you to assume, it would be reasonable and logical for you to conclude that it had been raining.

That is all there is to circumstantial evidence. You infer on the basis of reason and experience and common sense from one established fact the existence or non-existence of some other fact.

As you can see, the matter of drawing inferences from facts in evidence is not a matter of guesswork or speculation. An inference is a logical, factual conclusion that you might reasonably

draw from other facts that have been proven. Many material facts—such as what a person was thinking or intending—can rarely be proved by direct evidence.

Circumstantial evidence is as valuable as direct evidence. The law makes no distinction between direct and circumstantial evidence, but simply requires that before convicting a defendant, the jury must be satisfied of a defendant's guilt beyond a reasonable doubt, based on all the evidence in the case, circumstantial and direct.

There are times when different inferences may be drawn from the evidence. The Government asks you to draw one set of inferences. The defendant asks you to draw another. It is for you, and for you alone, to decide what inferences you will draw.

J. Witness Credibility

You have had the opportunity to observe the witnesses. It is now your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of each witness and of the importance of his or her testimony.

You should carefully scrutinize all of the testimony of each witness, the circumstances under which each witness testified, the impression the witness made when testifying, the relationship of the witness to the controversy and the parties, the witness's bias or impartiality, the reasonableness of the witness's statement, the strength or weakness of the witness's recollection when viewed in the light of all other testimony, and any other matter in evidence that may help you decide the truth and the importance of each witness's testimony.

In other words, what you must try to do in deciding credibility is to size a witness up in light of his or her demeanor, the explanations given, and all of the other evidence in the case. You should use your common sense, your good judgment, and your everyday experiences in life to make your credibility determinations.

In passing upon the credibility of a witness, you may also take into account any inconsistencies or contradictions as to material matters in his or her testimony.

If you find that any witness has willfully testified falsely as to any material fact, you have the right to reject the testimony of that witness in its entirety. On the other hand, even if you find that a witness has testified falsely about one matter, you may reject as false that portion of his or her testimony and accept as true any other portion of the testimony which commends itself to your belief or which you may find corroborated by other evidence in this case. A witness may be inaccurate, contradictory, or even untruthful in some aspects, and yet be truthful and entirely credible in other aspects of his or her testimony.

The ultimate question for you to decide in passing upon credibility is: did the witness tell the truth before you? It is for you to say whether his or her testimony at this trial is truthful in whole or in part.

K. Bias of Witnesses

In deciding whether to believe a witness, you should specifically note any evidence of hostility or affection that the witnesses may have towards one of the parties. Likewise, you should consider evidence of any other interest or motive that the witness may have in cooperating with a particular party. You should also take into account any evidence of any benefit that a witness may receive from the outcome of the case.

It is your duty to consider whether the witness has permitted any such bias or interest to color his or her testimony. In short, if you find that a witness is biased, you should view his or her testimony with caution, weigh it with care, and subject it to close and searching scrutiny.

Of course, the mere fact that a witness is interested in the outcome of the case does not mean he or she has not told the truth. It is for you to decide from your observations and applying

your common sense and experience and all the other considerations mentioned whether the possible interest of any witness has intentionally or otherwise colored or distorted his or her testimony. You are not required to disbelieve an interested witness; you may accept as much of his or her testimony as you deem reliable and reject as much as you deem unworthy of acceptance.

L. Prior Inconsistent or Consistent Statements

You have heard evidence that, at some earlier time, witnesses have said or done something that counsel argues is inconsistent with their trial testimony.

Evidence of a prior inconsistent statement was placed before you not because it is itself evidence of the guilt or innocence of the defendant, but only for the purpose of helping you decide whether to believe the trial testimony of a witness who may have contradicted a prior statement. If you find that the witness made an earlier statement that conflicts with the witness's trial testimony, you may consider that fact in deciding how much of the witness's trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency; and whether that explanation appealed to your common sense.

It is exclusively your duty, based upon all the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and if so, how much, if any, weight to give to the inconsistent statement in determining whether to believe all, or part of, the witness's testimony.

You have also heard evidence that certain witnesses made earlier statements that were consistent with their trial testimony. Such statements were admitted into evidence not as

independent evidence of guilt or innocence, but solely for whatever light they may shed on the witness's credibility. If you find that a witness had a motive to testify as he did, but also that he told the same story before he had that motive, you may take that into account in deciding whether the witness's interest or motive colored his testimony.

M. Preparation of Witnesses

You have heard evidence during the trial that witnesses had discussed the facts of the case and their testimony with the lawyers before the witnesses appeared in court. Although you may consider that fact when you are evaluating a witness's credibility, I should tell you that there is nothing either unusual or improper about a witness meeting with lawyers before testifying, so that the witness can be made aware of the subjects that he or she will be questioned about, focus on those subjects, and have the opportunity to review relevant exhibits before being questioned about them. In fact, it would be unusual for a lawyer to call a witness without such consultation. Again, the weight you give to the fact or the nature of the witness's preparation for his or her testimony and what inferences you draw from such preparation are matters completely within your discretion.

N. Stipulations of Fact

In this case, you have heard evidence in the form of stipulations of fact. A stipulation of fact is an agreement between the parties that a certain fact is true. You must regard such agreed-upon facts as true. However, it is for you to determine the effect to be given to those facts.

O. Bank Records and Electronic Communications

Various bank records and other electronic communications, such as emails, have been admitted into evidence. I instruct you that this evidence was obtained in a lawful manner and that no one's rights were violated, and a party's use of this evidence is entirely lawful.

Therefore, regardless of any personal opinions you may have regarding the obtaining of such evidence, you must give this evidence full consideration along with all the other evidence in this case in determining whether the Government has proved the defendant's guilt beyond a reasonable doubt. What significance you attach to this evidence is entirely your decision.

P. Particular Investigative Techniques Not Required

During the trial, you have heard testimony of witnesses bearing on the investigative techniques used in this case. You may consider these facts in deciding whether the Government has met its burden of proof, because as I told you, you should look to all of the evidence or lack of evidence in deciding whether the defendant is guilty. However, you also are instructed that there is no legal requirement that the Government use any of these specific investigative techniques to prove its case.

Whether you approve or disapprove of various law enforcement techniques, or whether you might have chosen to use or not use any particular technique, is not the question. Your concern, as I have said, is to determine whether or not, on the evidence or lack of evidence, the defendant's guilt has been proved beyond a reasonable doubt.

Q. Uncalled Witness—Equally Available

Both the Government and the defendant have the same power to subpoena witnesses to testify on their behalf. If a potential witness could have been called by the Government or by the defendant and neither called the witness, then you may draw the conclusion that the testimony of the absent witness might have been unfavorable to the Government or to the defendant or to both. On the other hand, it is equally within your province to draw no inference at all from the failure of either side to call a witness.

You should remember that there is no duty on either side to call a witness whose testimony would be merely cumulative of testimony already in evidence, or who would merely provide additional testimony to facts already in evidence. You should, however, remember my instruction that the law does not impose on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

R. Defendant's Right Not to Testify

The defendant, Ari Teman, did not testify in this case. Under our Constitution, a defendant has no obligation to testify or to present any evidence, because it is the Government's burden to prove the defendant guilty beyond a reasonable doubt. That burden remains with the Government throughout the entire trial and never shifts to the defendant. A defendant is never required to prove that he is innocent.

You may not attach any significance to the fact that Mr. Teman did not testify. No adverse inference against him may be drawn by you because he did not take the witness stand. You may not consider this against him in any way in your deliberations.

II. SUBSTANTIVE INSTRUCTIONS

I will turn now to my instructions to you relating to the charges brought against the defendant in this case.

A. The Indictment

The defendant is formally charged in an Indictment. As I instructed you at the outset of this case, the Indictment is merely a charge or accusation. It is not evidence, and it does not prove or even indicate guilt. As a result, you are to give it no weight in deciding the defendant's guilt or lack of guilt. What matters is the evidence you heard at this trial. Indeed, as I have previously

noted, the defendant is presumed innocent, and it is the prosecution's burden to prove the defendant's guilt beyond a reasonable doubt.

B. Summary of the Indictment

The Indictment contains four counts. Each count is a separate offense or crime. Each count must therefore be considered separately by you, and you must return a separate verdict on each count.

Counts One and Two of the Indictment charge the defendant with committing the offense of bank fraud. Count One charges him with a bank fraud scheme committed between in or about April 2019 up to and including in or about June 2019. Count Two charges him with a bank fraud scheme committed in or about March 2019.

Similarly, Counts Three and Four charge the defendant with two separate instances of wire fraud. Count Three charges him with a wire fraud scheme committed between in or about April 2019 up to and including in or about June 2019. Count Four charges him with committing a wire fraud scheme in or about March 2019.

I will now instruct you on the applicable law for each of the four counts.

C. Counts One and Two: Bank Fraud

As I said, Counts One and Two both charge the defendant with bank fraud, in violation of Title 18, United States Code, Section 1344. In other words, each count charges that the defendant devised a scheme to defraud a federally insured bank.

Count One charges the defendant with committing a bank fraud scheme in connection with the deposit in April 2019 of 27 checks, allegedly by creating, and then making the false pretense and representation to the bank that he had the account holders' authority to deposit, those checks. Count One of the Indictment reads:

> From at least in or about April 2019 up to and including at least in or about June 2019, in the Southern District of New York and elsewhere, ARI TEMAN, the defendant, willfully and knowingly, did execute and attempt to execute a scheme and artifice to defraud a financial institution, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and to obtain moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, such financial institution, by means of false and fraudulent pretenses, representations, and promises, to wit, TEMAN deposited counterfeit checks in the name of three third parties (respectively, "Entity-1," "Entity-2," and "Entity-3") into an account held at a particular financial institution ("Financial Institution-1"), and subsequently attempted to and did use those funds for his personal benefit.

Count Two charges the defendant with committing a bank fraud scheme in connection with the deposit in March 2019 of two checks, again allegedly by creating, and then making the false pretense and representation to the bank that he had the account holders' authority to deposit, those checks. Count Two of the Indictment reads:

> In or about March 2019, in the Southern District of New York and elsewhere, ARI TEMAN, the defendant, willfully and knowingly, did execute and attempt to execute a scheme and artifice to defraud a financial institution, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and to obtain moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, such financial institution, by means of false and fraudulent pretenses, representations, and promises, to wit, TEMAN deposited counterfeit checks in the name of Entity-3 and another third party ("Entity-4") into an account held at Financial Institution-1, and subsequently attempted to and did use those funds for his personal benefit.

I instruct you that in connection with the Indictment, "Entity-1" refers to ABJ Milano LLC, operated by ABJ Properties; "Entity-2" refers to ABJ Lenox LLC, operated by ABJ Properties; "Entity-3" refers to 518 West 204 LLC, operated by Coney Realty; "Entity-4" refers to 18 Mercer Equity Inc., operated by Crystal Real Estate Management; and "Financial Institution-1" refers to Bank of America.

To find the defendant guilty of the crimes charged in Counts One and Two of the Indictment, the Government must establish each of the following elements beyond a reasonable doubt:

First, that there was a scheme or artifice to defraud a bank, as alleged in the Indictment; OR that there was a scheme or artifice to obtain money or other property owned by a financial institution by means of materially false or fraudulent pretenses, representations, or promises, as alleged in the Indictment;

Second, that the defendant knowingly and willfully executed or attempted to execute the scheme or artifice—that is, that the defendant acted with knowledge of the fraudulent nature of the scheme and with the specific intent to defraud the bank or to obtain, by deceiving the bank, money or other property owned or controlled by that bank; and

Third, that the deposits of the bank involved were, at the time of the scheme, insured by the Federal Deposit Insurance Corporation.

Now I will explain each of three elements of bank fraud in more detail.

1. Element One: Existence of Scheme

The first element that the Government must prove beyond a reasonable doubt is that, on or about the dates set forth in the Indictment, (1) there was a scheme or artifice to defraud a bank; OR (2) there was a scheme or artifice to obtain money or other property owned by or under the custody or control of such a bank, by means of false or fraudulent pretenses, representations, or promises that were material to the scheme.

The Government must prove the existence of only one of these schemes. These two concepts are not necessarily mutually exclusive. If you find that either one type of scheme or artifice or both existed, then the first element of bank fraud is satisfied. However, you must be unanimous in your view as to at least one type of scheme or artifice that existed. If half of you think (1), but not (2), and the other half think (2), but not (1), then you must vote to acquit the defendant.

a. Scheme to Defraud a Bank

I will now explain what these terms mean and will begin with the key terms from (1), which requires the Government to prove beyond a reasonable doubt that there was a scheme or artifice to defraud a bank.

A "scheme or artifice" is a plan, device, or course of conduct to accomplish an objective.

"Fraud" is a general term. It is a term that includes all the possible means by which a person seeks to gain some unfair advantage over another person by false representations, false suggestions, false pretenses, or concealment of the truth. The unfair advantage sought can involve can involve money, property, or anything of value.

Thus, a "scheme to defraud" a bank is a pattern or course of conduct concerning a material matter designed to deceive a federally insured bank into releasing money or property, with the intent to cause the bank to suffer an actual or potential loss. This term—"scheme to defraud"—thus embraces all dishonest means, however ingenious, clever, or crafty, by which a person seeks to trick another out of their property. For example, a scheme to defraud may be accomplished through trickery, deceit, deception, or swindle.

The Government does not need to show that the defendant's conduct actually caused the bank to release money or property, but rather only needs to show that the defendant's conduct was designed to deceive the bank into releasing money or property.

This defines a scheme or artifice to defraud a bank, the first type of scheme prohibited by the federal bank fraud statute. You may find that a scheme to defraud existed only if the Government has proven beyond a reasonable doubt the existence of the scheme alleged in the Indictment, which I read to you a few moments ago.

b. Scheme to Obtain Money or Other Property Using False Pretenses

The second type of scheme charged, described at the beginning of this section as (2), is a scheme to obtain money or other property owned by, or under the custody and control of, a bank by means of false or fraudulent pretenses, representations, or promises. As to this type of scheme, the Government must show that false and fraudulent pretenses, representations, or promises were employed, and that they were directed at the bank with the intention of deceiving it.

This brings me to false and fraudulent pretenses, representations, or promises. A representation is fraudulent if it was made falsely with the intent to deceive. The deceptive means that are prohibited are not limited to active misrepresentations or lies told to the bank. Just as affirmatively stating facts as true when the facts are not true may constitute a false representation, the law recognizes that false representation need not be based on spoken words alone. The deception may arise from the intentional omission or concealment of facts that make what was written, said, or done deliberately misleading. The arrangement of the words, or the circumstances in which they are used, may convey a false and deceptive appearance. Accordingly, the misrepresentation may be written, oral, or arise from a course of conduct intended to communicate false facts to the bank. If there is intentional deception, the manner in which it is accomplished does not matter.

These false representations must be "material," which is a term that I will define momentarily. In short, it does not matter whether any decision makers at the bank actually relied upon the misrepresentation. It is sufficient if the misrepresentation is one that is capable of influencing the bank's decision and is intended by the defendant to do so.

c. Concepts Applying to Both Schemes

Let me repeat again that there are two ways the Government may satisfy this first element beyond a reasonable doubt: first, by proving that there was a scheme to defraud a bank; or second, by proving that there was a scheme to obtain money or other property owned by, or under the custody or control of, the bank by false or fraudulent pretenses, representations, or promises.

I have referred, in the context of both ways the Government may satisfy this first element, to a "materiality" requirement. We use the word "material" to distinguish between the kinds of statements we care about and those that are of no real importance. A "material" fact is one which would reasonably be expected to be of concern to a reasonable and prudent person relying on the representation or statement in making a decision. This means that if you find a particular statement of fact made by the defendant to have been false, you must then determine whether that statement of fact was one that a reasonable person might have considered important in making his or her decision. The same principle applies to fraudulent half-truths or omissions of material facts.

The Government need not prove an actual loss of funds by the bank. Nor is it necessary for the Government to establish that the defendant actually realized any gain from the scheme. The success of a scheme to defraud is irrelevant. What matters is whether there existed a scheme to defraud. The bank fraud statute prohibits successfully defrauding a financial institution as well as attempts to do so. You must concentrate on whether there was such a scheme.

It does not matter whether the bank involved might have discovered the fraud had it probed further, or been more careful. If you find that a scheme or artifice existed, it is irrelevant whether you believe that the bank was careless, gullible, or even negligent.

Finally, in order to establish the existence of a scheme, the Government is not required to establish that the defendant himself started the scheme to defraud. It is sufficient if you find that a scheme to defraud existed, even if initiated by another.

If you find that the Government has sustained its burden of proof that a scheme to defraud a bank or to obtain money by false pretenses did exist, as charged, you next should consider the second element.

2. Element Two: Knowing and Willful Participation in the Scheme

The second element that the Government must establish beyond a reasonable doubt is that the defendant executed or attempted to execute the scheme knowingly, willfully, and with the intent to defraud the bank, or to obtain money or other property owned by the bank or under the bank's custody or control.

A person acts "knowingly" when he acts voluntarily and deliberately, rather than mistakenly or inadvertently.

A person acts "willfully" when he acts knowingly and purposefully, with an intent to do something the law forbids, that is to say, with bad purpose either to disobey or disregard the law. It is not necessary that the defendant knew he was violating a particular law. It is enough if you find that he was aware that what he was doing was, in general, unlawful.

To act with "intent to defraud" means to act knowingly and with the specific intent to deceive, for the purpose of causing some financial loss to another.

The question of whether a person acted knowingly, willfully, and with intent to defraud is a question of fact for you to determine, like any other question of fact. Direct proof of knowledge and fraudulent intent is almost never available. It would be a rare case where it could be shown

that a person wrote or stated that as of a given time in the past he committed an act with fraudulent intent. Such direct proof is not required.

Accordingly, the ultimate facts of knowledge and criminal intent may be established by circumstantial evidence, based upon a person's outward manifestations, his words, his conduct, his acts, all the surrounding circumstances disclosed by the evidence, and the rational or logical inferences that may be drawn from the evidence. Use your common sense. But regardless of whether you look to direct evidence, circumstantial evidence, or a combination thereof, the government must establish the essential elements of the crime charged beyond a reasonable doubt—including the requisite mental states.

The Government must prove beyond a reasonable doubt that the defendant participated in the alleged scheme with an understanding of its fraudulent or deceptive character and with the intent to help it succeed. There are certain things the Government need not prove in order to meet that burden. It need not prove that the defendant participated in, or even knew about, all the operations of the scheme. It need not prove that the defendant originated the scheme, or participated in it from its inception, since a person who participates in a scheme after it begins is just as guilty as those who participated from the beginning, as long as he becomes aware of the scheme's general purpose and operation and acts intentionally to further its unlawful goal or goals. It need not prove that the defendant participated in the scheme to the same degree as other participants. Finally, the Government need not prove actual or potential loss to the bank, so long as there is evidence that the defendant intended to expose the bank to such loss.

3. Element Three: Federally Insured Financial Institution

The third and final element that the Government must prove beyond a reasonable doubt is that the bank that was the subject of the defendant's scheme or artifice was a federally insured

financial institution. This simply means that the bank's deposits had to be insured by the Federal Deposit Insurance Corporation.

The Government need not show that the defendant knew that the bank in question was federally insured to satisfy this third element. It must prove, however, that the defendant intended to defraud a financial institution.

4. Attempt

The bank fraud statute prohibits not only successful defrauding of a financial institution, but also attempting, which means trying to do so. Thus, the Government is required to prove only that the defendant attempted, or tried, to execute the alleged scheme or artifice; there is no need for the Government to prove that the defendant was successful in this endeavor.

In order to prove that the defendant attempted bank fraud, the evidence must show beyond a reasonable doubt that (1) the defendant intended to commit the bank fraud, and (2) the defendant willfully took some action that was a substantial step in an effort to bring about or accomplish the crime.

Mere intention to commit a specific crime does not amount to an attempt. In order to convict the defendant of an attempt, you must find beyond a reasonable doubt both that he intended to commit the crime of bank fraud, and that he took some action that was a substantial step towards the commission of that crime.

Merely preparing to commit a crime is not the same thing as taking a substantial step toward the commission of the crime. The defendant must go beyond simply preparing and perform an act that confirms his intention to execute the scheme. The Government does not have to prove that the defendant did everything except take the last step necessary to complete the scheme. Any substantial step beyond mere preparation is enough.

D. Counts Three and Four: Wire Fraud

That concludes my review of the elements of bank fraud. I will now turn to Counts Three and Four, both of which charge the defendant with wire fraud, in violation of Title 18, United States Code, Section 1343.

Count Three charges the defendant with a wire fraud scheme in connection with the deposit in April 2019 of the 27 checks which are the subject of Count One, allegedly by creating, and then making the false pretense and representation to the bank that the defendant had the account holders' authorization to deposit, those checks. Count Three charges—and again I am reading from the Indictment—that:

> From at least in or about April 2019 up to and including at least in or about June 2019, in the Southern District of New York and elsewhere, ARI TEMAN, the defendant, willingly and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, TEMAN deposited counterfeit checks drawing funds from accounts belonging to "Entity-1," "Entity-2," and "Entity-3" and subsequently attempted to and did use those funds for his personal benefit, and in furtherance of such a scheme caused a wire communication to be sent.

Count Four charges the defendant with a wire fraud scheme in connection with the deposit in March 2019 of the two checks which are the subject of Count Two, allegedly by creating, and then making the false pretense and representation to the bank that the defendant had the account holders' authorization to deposit, those checks. Count Four charges—again reading from the Indictment—that:

> In or about March 2019, in the Southern District of New York and elsewhere, ARI TEMAN, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire, radio, and television communication

> in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, TEMAN deposited counterfeit checks drawing funds from accounts belonging to Entity-3 and Entity-4 and subsequently attempted to and did use those funds for his personal benefit, and in furtherance of such a scheme caused a wire communication to be sent.

Earlier, I instructed you about who the terms "Entity-1," "Entity-2," "Entity-3," and "Entity-4," as used in Counts One and Two, refer to. Those instructions apply equally to Counts Three and Four.

I will now turn to the elements of wire fraud. In order to prove the defendant guilty of wire fraud in both Counts Three and Four, the Government must establish each of the following three elements beyond a reasonable doubt:

First, that there was a scheme or artifice to defraud, OR to obtain money or property by materially false or fraudulent pretenses, representations, or promises;

Second, that the defendant knowingly and willfully devised or participated in the scheme or artifice to defraud, with knowledge of the fraudulent nature of the scheme and with the specific intent to defraud; and

Third, in execution of that scheme, the defendant used or caused others to use interstate or foreign wires as specified in the Indictment.

My instructions as to Counts One and Two, the bank fraud counts, cover a number of the concepts relevant to Counts Three and Four. And so, my instructions as to Counts Three and Four will be brief.

1. Element One: A Scheme to Defraud

The first element that the Government must prove, beyond a reasonable doubt, is that there was a scheme to defraud or to obtain money or property. I have already instructed you in

connection with Counts One and Two what it means to employ a scheme or artifice to defraud. Those instructions apply here as well.

The scheme that the Government alleges in Count Three is the same scheme involving the defendant's depositing of 27 checks in April 2019, which is the subject of Count One. To find the first element as to Count Three, you must therefore find that the scheme had as an object the use of the funds from these checks for the defendant's personal benefit.

Similarly, the scheme the Government alleges in Count Four is the same scheme involving the defendant's depositing of 2 checks in March 2019, which is the subject of Count Two. To find the first element as to Count Four, you must therefore find that the scheme had as an object the use of the funds from these checks for the defendant's personal benefit.

2. Element Two: Knowing and Willful Participation in the Scheme

The second element that the Government must prove, beyond a reasonable doubt, is that the defendant devised or participated in the scheme knowingly, willfully, and with a specific intent to defraud. I have already defined knowingly, willfully, and with a specific intent to defraud, and my earlier instructions apply here as well. I will quickly define a few additional terms as to this element.

To "devise" a scheme to defraud is to concoct or plan it.

To "participate" in a scheme to defraud means to associate oneself with it, with the intent of making it succeed.

3. Element Three: Use of Interstate Wires

The third and final element of the wire fraud charge is that the Government must establish beyond a reasonable doubt that interstate or foreign wires were used in furtherance of the scheme to defraud.

"Wires" includes telephone calls, faxes, email, Internet, radio, or television communication. The use of the wires must be between states or between the United States and another country. The wire communication must pass between two or more states as, for example, a telephone call between New York and New Jersey; or it must pass between the United States and a foreign country, such as a telephone call between New York and London. The Government is not required, however, to prove that a defendant knew or could foresee the interstate or international nature of the wire communication.

The use of the wires need not itself be fraudulent. Stated another way, the communication need not contain any fraudulent representation. To be in furtherance of the scheme, the wire communication must be incident to an essential part of the scheme to defraud and must have been caused by the defendant. It is sufficient if the wires were used to further or assist in carrying out the scheme to defraud or the scheme to obtain money by means of false representations.

It is not necessary for the defendant to be directly or personally involved in any wire communication, as long as the communication is reasonably foreseeable in the execution of the alleged scheme to defraud in which the defendant is accused of participating. In this regard, it is sufficient to establish this element of the crime if the evidence justifies a finding that the defendant caused the wires to be used by others. This does not mean that the defendant must have specifically authorized others to execute a wire communication. Rather, when one does an act with knowledge that the use of the wires will follow in the ordinary course of business, or where such use of the wires can reasonably be foreseen, even if not actually intended, then he causes the wires to be used.

The Government must prove beyond a reasonable doubt the particular use of the wires on which the Indictment is based. Here, the wire fraud counts are based on wire communications

related to the defendant's depositing of alleged counterfeit checks. To convict the defendant on Counts Three and Four, you must unanimously agree on a particular one of these wires and that it was in furtherance of the charged wire-fraud scheme.

However, the Government does not have to prove that the wire was used on the exact date charged. It is sufficient if the evidence establishes beyond a reasonable doubt that the wires were used on a date reasonably near the date alleged.

E. Unanimity

This concludes my review of the elements of wire fraud. I have a few final substantive instructions that are not particular to a specific count.

The first relates to the requirement that the jury verdict be unanimous.

Each of the four counts in the Indictment charges the defendant with an offense—either bank fraud or wire fraud—involving multiple checks drawn on the accounts of multiple entities. Thus, Counts One and Three allege these respective offenses in connection with the defendant's alleged deposit of 27 checks, each drawn on the account of one of three entities: ABJ Milano LLC; ABJ Lenox LLC; and 518 West 204 LLC. And Counts Two and Four allege these respective offenses in connection with the defendant's alleged deposit of two checks, one drawn on the account of 518 West 204 LLC; and the other drawn on the account of 18 Mercer Equity Inc.

As to each count, I instruct you that the Government need not prove, and you need not find, that the elements of the offense in question have been met with respect to each of the checks or each of the entities to which that count relates. However, to convict the defendant of a particular count, you must unanimously agree that the elements of the offense in question have been established, beyond a reasonable doubt, with respect to at least one entity to which that count relates. So, for example, on Count Two, you may not return a verdict of guilty unless you

unanimously agree that the elements of bank fraud have been established with respect to one of the two entities, 518 West 204 LLC or 18 Mercer Equity Inc., to which that count relates. If half of the jury found that the elements of bank fraud had been established with respect to the check drawn on the account of 518 West 204 LLC, and the other half of the jury found that the elements of bank fraud had been established with respect to 18 Mercer Equity Inc., but the jury was not in unanimous agreement as to one entity, you could not return a verdict of guilty.

F. Good Faith

An essential element of the crimes of bank fraud and wire fraud as charged in Counts One through Four of the Indictment is intent to defraud. It follows that good faith on the part of the defendant is an absolute defense to a charge of fraud. The burden of establishing lack of good faith and criminal intent rests upon the prosecution. A defendant is under no burden to prove his good faith; rather, the prosecution must prove bad faith or knowledge of falsity beyond a reasonable doubt.

Under the bank fraud and wire fraud statutes, even false representations or statements or omissions of material facts do not amount to a fraud unless done with fraudulent intent. However misleading or deceptive a plan may be, it is not fraudulent if it was devised or carried out in good faith. If the defendant believed in good faith that he was acting properly, even if he was mistaken in that belief, and even if others were injured by his conduct, there is no crime.

A venture commenced in good faith may become fraudulent if it is continued after a fraudulent intent has been formed. Therefore, good faith is no defense when the defendant first made representations in good faith but later, during the time charged in the Indictment, the defendant realized that the representations were false and nevertheless deliberately continued to make them. You must review and put together all the circumstances in deciding whether or not it

has been established beyond a reasonable doubt that the defendant devised or participated in a scheme to defraud knowingly, willfully, and with the intent to defraud, or whether he acted in good faith.

There is a final consideration to bear in mind in deciding whether or not the defendant acted in good faith. You are instructed that if the defendant participated in the scheme to defraud, then a belief by the defendant, if such a belief existed, that ultimately everything would work out so that no one would lose any money does not require a finding by you that he acted in good faith. If the defendant participated in the scheme for the purpose of causing financial or property loss to another, then no amount of honest belief on the part of the defendant that the scheme will cause ultimately make a profit or cause no harm will excuse fraudulent actions or false representations by him.

G. Advice of Counsel

You have heard evidence that the defendant consulted with a lawyer, Ariel Reinitz. You may consider that evidence in deciding whether the defendant acted knowingly, willfully, and with a specific intent to defraud.

The mere fact that the defendant may have received legal advice does not, in itself, necessarily constitute a complete defense to the charges of bank fraud and wire fraud. Instead, you must ask yourselves whether the defendant honestly and in good faith sought the advice of a competent lawyer as to what he may lawfully do; whether he fully and honestly laid all the facts before his lawyer; and whether in good faith he honestly followed such advice, relying on it and believing it to be correct. In short, you should consider whether, in seeking and obtaining advice from a lawyer, the defendant intended that his acts shall be lawful. If he did so, it is the law that a

defendant cannot be convicted of a crime that involves willful and unlawful intent, even if such advice were an inaccurate construction of the law.

On the other hand, no man can willfully and knowingly violate the law and excuse himself from the consequences of his conduct by pleading that he followed the advice of his lawyer.

Whether the defendant acted in good faith for the purpose of seeking guidance as to the specific acts in this case, and whether he made a full and complete report to his lawyer, and whether he acted substantially in accordance with the advice received, are questions for you to determine.

H. Conscious Avoidance

I told you earlier that the defendant must have acted knowingly, as I have defined that term, in order to be convicted. That is true with respect to all four counts charged in the Indictment. In determining whether the defendant acted knowingly, you may consider whether the defendant closed his eyes to what would have otherwise been obvious to him. That is what the phrase "conscious avoidance" refers to.

As I have told you before, acts done knowingly must be a product of a person's conscious intention. They cannot be the result of carelessness, negligence, or foolishness. But a person may not intentionally remain ignorant of a fact that is material and important to his conduct in order to escape the consequences of the criminal law.

Here, the Government argues that the defendant consciously avoided material information insofar as he did not invoice or otherwise notify his customers, in advance of his drawing and depositing checks on their accounts in March and April 2019, of his claim that they owed his business money in the amounts reflected on those checks. The Government alleges that the defendant was thereby closing his eyes to the fact that the customers did not approve and would not have approved these charges. The defendant disputes that he consciously avoided learning

such information. He argues that he believed in good faith, based on his communications with his customers and his understanding of communications he believed his attorney had had with his customers, that the customers had given him advance approval for these charges, and also advance approval to remotely create checks on their accounts as a means of paying the debts that they owed him.

As to this point, I instruct you as follows. An argument by the Government of conscious avoidance is not a substitute for proof of knowledge; it is simply another factor that you, the jury, may consider in deciding what the defendant knew. Thus, if you find beyond a reasonable doubt that the defendant was aware that there was a high probability that a fact was so, but that the defendant deliberately avoided confirming this fact, such as by purposely closing his eyes to it or intentionally failing to investigate it, then you may treat this deliberate avoidance of positive knowledge as the equivalent of knowledge.

In sum, if you find that the defendant believed there was a high probability that a fact was so and that the defendant deliberately and consciously avoided learning the truth of that fact, you may find that the defendant acted knowingly with respect to that fact. However, if you find that the defendant actually believed the fact was not so, then you may not find that he acted knowingly with respect to that fact. You must judge from all the circumstances and all the proof whether the Government did or did not satisfy its burden of proof beyond a reasonable doubt.

I. Variance in Dates and Amounts

The Indictment refers to a range of dates and monetary amounts. I instruct you that it does not matter if a specific event is alleged to have occurred on or about a certain date, but the testimony indicates that in fact it was a different date. Likewise, it does not matter if a transaction is alleged to have involved a certain amount of money, but the testimony indicates that in fact it

was a different amount of money. The law requires only a substantial similarity between the dates and amounts alleged in the Indictment and the dates and amounts established by the evidence.

J. False Exculpatory Statements

You have heard testimony that the defendant made statements in which he claimed that his conduct was consistent with innocence and not with guilt. The Government claims that these statements in which the defendant exculpated himself are false. The defendant disputes this.

If you find that the defendant gave a false statement in order to divert suspicion from himself, you may infer, but you are not required to infer, that the defendant believed that he was guilty. You may not, however, infer on the basis of this alone that the defendant is, in fact, guilty of the crimes for which he is charged.

Whether or not the evidence as to the defendant's statements shows that the defendant believed that he was guilty, and the significance, if any, to be attached to any such evidence, are matters for you, the jury, to decide.

K. Venue

In addition to the elements I have described for you, in order to convict on each charged offense, you must decide whether the crime occurred within the Southern District of New York. The Southern District of New York includes Manhattan, the Bronx, Westchester County, as well as other areas. In this regard, the Government need not prove that the crime was committed in its entirety in this District or that the defendant himself was present here. It is sufficient to satisfy this element if any act in furtherance of the crime occurred in this District. The act itself may not be a criminal act. It could include, for example, executing a financial transaction within this District. And the act need not have been taken by the defendant, so long as the act was part of the crime that you find the defendant committed.

I should note that on this issue—and this issue alone—the Government need not offer proof beyond a reasonable doubt. Venue need be proven only by a preponderance of the evidence. The Government has satisfied its venue obligations, therefore, if you conclude that it is more likely than not that the crime occurred within this District.

If you find that the Government has failed to prove this venue requirement, you must acquit the defendant of these charges.

III. DELIBERATIONS OF THE JURY

A. Right to See Exhibits and Hear Testimony

Ladies and gentlemen of the jury, that concludes the substantive portion of my instructions to you. You are about to go into the jury room and begin your deliberations. If during those deliberations you want to see any of the exhibits, you may request that they be brought into the jury room. If you want any of the testimony read, you may also request that. Please remember that it is not always easy to locate what you might want, so be as specific as you possibly can in requesting exhibits or portions of the testimony. And please be patient—with respect to requests for testimony, it can sometimes take counsel and the Court some time to identify the portions that are responsive to your request. If you want any further explanation of the law as I have explained it to you, you may also request that.

To assist you in your deliberations, I am providing you with a list of witnesses, in the order in which they testified; a list of exhibits; a verdict form, which I will discuss in a moment; and a copy of these instructions. There is one of each of these for each juror. I am also providing you with a copy of the Indictment. I remind you that the Indictment is not evidence.

B. Communication with the Court

Your requests for exhibits or testimony—in fact any communications with the Court—should be made to me in writing, signed by your foreperson, and given to one of the marshals. In any event, do not tell me or anyone else how the jury stands on any issue until after a unanimous verdict is reached.

C. Notes

Some of you have taken notes periodically throughout this trial. I want to emphasize to you, as you are about to begin your deliberations, that notes are simply an aid to memory. Notes that any of you may have made may not be given any greater weight or influence than the recollections or impressions of other jurors, whether from notes or memory, with respect to the evidence presented or what conclusions, if any, should be drawn from such evidence. All jurors' recollections are equal. If you can't agree on what you remember the testimony to have been, you can ask to have the transcript read back.

D. Duty to Deliberate; Unanimous Verdict

You will now retire to decide the case. Your function is to weigh the evidence in this case and to determine the guilt or lack of guilt of the defendant with respect to the count charged in the Indictment. You must base your verdict solely on the evidence and these instructions as to the law, and you are obliged on your oath as jurors to follow the law as I instruct you, whether you agree or disagree with the particular law in question.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement. Each of you must decide the case for himself or herself, but you should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. Discuss and weigh your respective opinions

dispassionately, without regard to sympathy, without regard to prejudice or favor for either party, and adopt that conclusion which in your good conscience appears to be in accordance with the truth.

When you are deliberating, all 12 jurors must be present in the jury room. If a juror is absent, you must stop deliberations.

Again, your verdict must be unanimous, but you are not bound to surrender your honest convictions concerning the effect or weight of the evidence for the mere purpose of returning a verdict or solely because of the opinion of other jurors. Each of you must make your own decision about the proper outcome of this case based on your consideration of the evidence and your discussions with your fellow jurors. No juror should surrender his or her conscientious beliefs solely for the purpose of returning a unanimous verdict.

Remember at all times, you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

If you are divided, do not report how the vote stands. If you reach a verdict do not report what it is until you are asked in open court.

E. Verdict Form

I have prepared a verdict form for you to use in guiding your deliberation and recording your decision. Please use that form to report your verdict.

F. Duties of Foreperson

Finally, I referred a moment ago to a foreperson. The first thing you should do when you retire to deliberate is take a vote to select one of you to sit as your foreperson, and then send out a note indicating whom you have chosen.

The foreperson doesn't have any more power or authority than any other juror, and his or her vote or opinion doesn't count for any more than any other juror's vote or opinion. The foreperson is merely your spokesperson to the Court. He or she will send out any notes, and when the jury has reached a verdict, he or she will notify the marshal that the jury has reached a verdict, and you will come into open court and give the verdict.

G. Return of Verdict

After you have reached a verdict, your foreperson will fill in and date the form that has been given to you. All jurors must sign the form reflecting each juror's agreement with the verdict. The foreperson should then advise the marshal outside your door that you are ready to return to the courtroom.

I will stress that each of you must be in agreement with the verdict which is announced in court. Once your verdict is announced by your foreperson in open court and officially recorded, it cannot ordinarily be revoked.

In conclusion, ladies and gentlemen, I am sure that if you listen to the views of your fellow jurors and if you apply your own common sense, you will reach a fair verdict here.

IV. CONCLUSION

Members of the jury, that concludes my instructions to you. I will ask you to remain seated while I confer with the attorneys to see if there are any additional instructions that they would like to have me give to you or anything I may not have covered in my previous statement.

* * * * *

Before you retire into the jury room, I must excuse our two alternates with the thanks of the Court. You have been very attentive and very patient. I'm sorry that you will miss the experience of deliberating with the jury, but the law provides for a jury of 12 persons in this case.

So before the rest of the jury retires into the jury room, if you have any clothing or objects there, you are asked to pick them up and to withdraw before any deliberations start.

Please do not discuss the case with anyone, or research the case, over the next few days. It is possible, and I have had this occur in a trial, that unexpected developments such as a juror's serious illness, may require the substitution of a deliberating juror by an alternate. And so it's vital that you not speak to anyone about the case or research the case until you have been notified that the jury's deliberations are over and the jury has been excused. And if you would like to be advised of the outcome of the trial, please make sure that Mr. Smallman has a phone number at which you can be reached.

(Alternates excused)

Members of the jury, you may now retire. The marshal will be sworn before we retire.

(Marshal sworn)

EXHIBIT 3

A-1383

Witnesses
Karin Finocchiaro
Elie Gabay
Bonnie Soon-Osberger
Gina Hom
Joseph Soleimani
Joseph Motto
Ariel Reinitz

EXHIBIT 4

A-1385

U.S. v. Teman, 19 Cr. 696 (PAE) **Exhibit List**

Government Exhibits			
#	Description	Witness	Received
100 Series - Bank Records - Bank of America			
101	GateGuard Account Opening Documents	**Finocchiaro**	**1/22**
102	GateGuard Bank Statements	**Finocchiaro**	**1/22**
103	Friend or Fraud Account Opening Documents	**Finocchiaro**	**1/22**
104	Friend or Fraud Bank Statements	**Finocchiaro**	**1/22**
105	Touchless Labs Account Opening Documents	**Finocchiaro**	**1/22**
106	Touchless Labs Bank Statements	**Finocchiaro**	**1/22**
107	Ari Teman Account Opening Document	**Finocchiaro**	**1/22**
108	Ari Teman Bank Statements	**Finocchiaro**	**1/22**
110	April 19, 2019 2_37 PM Surveillance Photographs	**Finocchiaro**	**1/22**
111	April 19, 2019 6_00 PM Surveillance Photographs	**Finocchiaro**	**1/22**
112	May 8, 2019 3_04 PM Surveillance Photographs	**Finocchiaro**	**1/22**
113	Bank Records Spreadsheet	**Finocchiaro**	**1/22**
114	Returned Check Records	**Finocchiaro**	**1/22**
120 Series - Bank Records - JP Morgan Chase			
121	ABJ Lenox Account Opening Document	**Soleimani**	**1/23**
122	ABJ Lenox Bank Statements	**Soleimani**	**1/23**
123	ABJ Milano Account Opening Documents	**Soleimani**	**1/23**
124	ABJ Milano Bank Statements	**Soleimani**	**1/23**
127	May 2, 2019 Letter - ABJ Lenox	**Soleimani**	**1/23**
129	May 2, 2019 Letter - ABJ Milano	**Soleimani**	**1/23**
130	ABJ Lenox Checks	**Soleimani**	**1/23**
131	ABJ Milano Checks	**Soleimani**	**1/23**
140 Series - Bank Records - Signature Bank			
141	18 Mercer Account Opening Documents	**Gabay**	**1/23**
142	18 Mercer Bank Statements	**Gabay**	**1/23**
143	April 4, 2018 Check from 18 Mercer Equity to GateGuard	**Gabay**	**1/23**
144	518 W 204 Account Opening Documents	**Gabay**	**1/23**
145	518 W 204 Bank Statements	**Gabay**	**1/23**
146	January 31, 2018 Check from 518 W 204 to GateGuard	**Gabay**	**1/23**
147	March 28, 2019 Check from 518 West 205 to GateGuard	**Motto**	**1/24**
150 (D-29)	Affidavit	**Gabay**	**1/23**
200 Series - Checks			
201	March 28, 2019 Check from Coney Realty to GateGuard	**Finocchiaro**	**1/22**
202	March 28, 2019 Check from 18 Mercer Equity to GateGuard	**Finocchiaro**	**1/22**
203	April 19, 2019 Check from 518 West 205 to GateGuard	**Finocchiaro**	**1/22**
204	April 19, 2019 Check from ABJ Milano to GateGuard	**Finocchiaro**	**1/22**
205	April 19, 2019 Check from ABJ Lennox to GateGuard	**Finocchiaro**	**1/22**

A-1386

***U.S. v. Teman*, 19 Cr. 696 (PAE)** **Exhibit List**

Government Exhibits			
#	**Description**	**Witness**	**Received**
206	April 19, 2019 GateGuard Counter Deposit	**Finocchiaro**	**1/22**
400 Series - Correspondence - ABJ Properties			
401	September 9, 2017 Email - 'We're Live'	**Soleimani**	**1/23**
402	November 6, 2017 Email - 'Current Issues'	**Soleimani**	**1/23**
403	March 9, 2018 Email - 'Ending GateGuard'	**Soleimani**	**1/23**
404	May 7, 2018 Email - 'All Communication in Writing'	**Soleimani**	**1/23**
405	May 22, 2018 Email - 'GateGuard'	**Soleimani**	**1/23**
406	August 26, 2018 Email - 'Dispute on Charge...'	**Soleimani**	**1/23**
407	September 18, 2018 Email - 'Sublet Spy Hits...'	**Soleimani**	**1/23**
408	December 14, 2018 Email - 'Notice of Intent'	**Soleimani**	**1/23**
409	June 14, 2019 GateGuard Invoice	**Soleimani**	**1/23**
409A	Invoices (1)	**Soleimani**	**1/23**
409B	Invoices (2)	**Soleimani**	**1/23**
409C	Conversation between Teman and Soleimani	**Soleimani**	**1/23**
410 Series - Correspondence - Coney Realty			
412	January 1, 2018 Email - 'Tenant Ana Esterg'	**Gabay**	**1/23**
413	January 19, 2018 Email - 'Invoice Sent'	**Gabay**	**1/23**
414	January 24, 2018 Email - 'Form for the 10 Buildings'	**Gabay**	**1/23**
415	March 25, 2018 Email - 'Invoice for 20 Buildings'	**Gabay**	**1/23**
416	March 26, 2018 Email - 'Invoice for 20 Buildings' (1)	**Gabay**	**1/23**
417	March 26, 2018 Email - 'Invoice for 20 Buildings' (2)	**Gabay**	**1/23**
418	March 27, 2018 Email - 'Proof it's Your...'	**Gabay**	**1/23**
430 Series - Correspondence - Crystal			
431	April 4, 2018 Email - 'Invoice'	**Osberger**	**1/23**
440 Series - Correspondence - 18 Mercer			
441	GateGuard Terms and Conditions	**Osberger**	**1/23**
442	April 2, 2018 Email - 'References'	**Osberger**	**1/23**
443	January 7, 2019 Email - 'Contract'	**Osberger**	**1/23**
500 Series – Stipulations			
501	Bank Records Stipulation	**Finocchiaro**	**1/22**
700 Series			
702	January 2, 2019 WhatsApp Messages	**Reinitz**	**1/24**
704	April 2, 2019 WhatsApp Messages	**Reinitz**	**1/24**
727	April 2, 2019 Whatsapp Messages (2)	**Reinitz**	**1/27**
728	April 3, 2019 Whatsapp Messages	**Reinitz**	**1/27**
729	April 10, 2019 WhatsApp Messages	**Reinitz**	**1/27**

A-1387

***U.S. v. Teman*, 19 Cr. 696 (PAE)** **Exhibit List**

Defense Exhibits			
#	Description	Witness	Received
D-2	Payment Terms (1/27/2019)	**Reinitz**	**1/24**
D-14	October 11, 2018 Email – 'ABJ Properties'	**Soleimani**	**1/24**
D-15	October 22, 2018 Email - 'SubletSpy hits'	**Soleimani**	**1/24**
D-16	'Notice of Hold'	**Finocchiaro**	**1/23**
D-29	Affidavit	**Gabay**	**1/23**
D-36	March 28, 2018 Email – 'Invoice for 20 Buildings'	**Gabay**	**1/23**
D-49	Declaration	**Soleimani**	**1/24**
D-51	Chase Information Request	**Soleimani**	**1/24**
D-52	'RCC BREACH' ABJ Lennox Checks	**Finocchiaro**	**1/23**
D-62		**Soleimani**	**1/24**
D-70	GateGuard Logs	**Soleimani**	**1/24**
D-71	May 22, 2018 Email – 'Re: Gateguard'	**Reinitz**	**1/27**

A-1388

EXHIBIT 5

A-1389

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	INDICTMENT
- v. -	:	S2 19 Cr. 696 (PAE)
ARI TEMAN,	:	
Defendant.	:	

COUNT ONE
(Bank Fraud)

The Grand Jury charges:

1. From at least in or about April 2019 up to and including at least in or about June 2019, in the Southern District of New York and elsewhere, ARI TEMAN, the defendant, willfully and knowingly, did execute and attempt to execute a scheme and artifice to defraud a financial institution, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and to obtain moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, such financial institution, by means of false and fraudulent pretenses, representations, and promises, to wit, TEMAN deposited counterfeit checks in the name of three third parties (respectively, "Entity-1," "Entity-2," and "Entity-3") into an account held at a particular financial

institution ("Financial Institution-1"), and subsequently attempted to and did use those funds for his personal benefit.

(Title 18, United States Code, Section 1344.)

COUNT TWO
(Bank Fraud)

The Grand Jury further charges:

2. In or about March 2019, in the Southern District of New York and elsewhere, ARI TEMAN, the defendant, willfully and knowingly, did execute and attempt to execute a scheme and artifice to defraud a financial institution, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and to obtain moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, such financial institution, by means of false and fraudulent pretenses, representations, and promises, to wit, TEMAN deposited counterfeit checks in the name of Entity-3 and another third party ("Entity-4") into an account held at Financial Institution-1, and subsequently attempted to and did use those funds for his personal benefit.

(Title 18, United States Code, Section 1344.)

COUNT THREE
(Wire Fraud)

The Grand Jury further charges:

3. From at least in or about April 2019 up to and including at least in or about June 2019, in the Southern

District of New York and elsewhere, ARI TEMAN, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, TEMAN deposited counterfeit checks drawing funds from accounts belonging to "Entity-1," "Entity-2," and "Entity-3" and subsequently attempted to and did use those funds for his personal benefit, and in furtherance of such a scheme caused a wire communication to be sent.

(Title 18, United States Code, Section 1343.)

COUNT FOUR
(Wire Fraud)

The Grand Jury further charges:

4. In or about March 2019, in the Southern District of New York and elsewhere, ARI TEMAN, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of

A-1392

wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, TEMAN deposited counterfeit checks drawing funds from accounts belonging to Entity-3 and Entity-4 and subsequently attempted to and did use those funds for his personal benefit, and in furtherance of such a scheme caused a wire communication to be sent.

(Title 18, United States Code, Section 1343.)

FOREPERSON

GEOFFREY S. BERMAN
United States Attorney

A-1393

EXHIBIT 6

A-1394

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, -v- ARI TEMAN, Defendant.	Verdict Sheet S2 19 Cr. 696 (PAE)

All verdicts must be unanimous. Please indicate your verdict with a check mark (✓).

COUNT ONE:
Bank Fraud (April 2019 Checks)

GUILTY_____ NOT GUILTY_____

COUNT TWO:
Bank Fraud (March 2019 Checks)

GUILTY_____ NOT GUILTY_____

COUNT THREE:
Wire Fraud (April 2019 Checks)

GUILTY_____ NOT GUILTY_____

COUNT FOUR:
Wire Fraud (March 2019 Checks)

GUILTY_____ NOT GUILTY_____

A-1395

After completing the form, each juror must sign below, reflecting his or her agreement with the forgoing verdict.

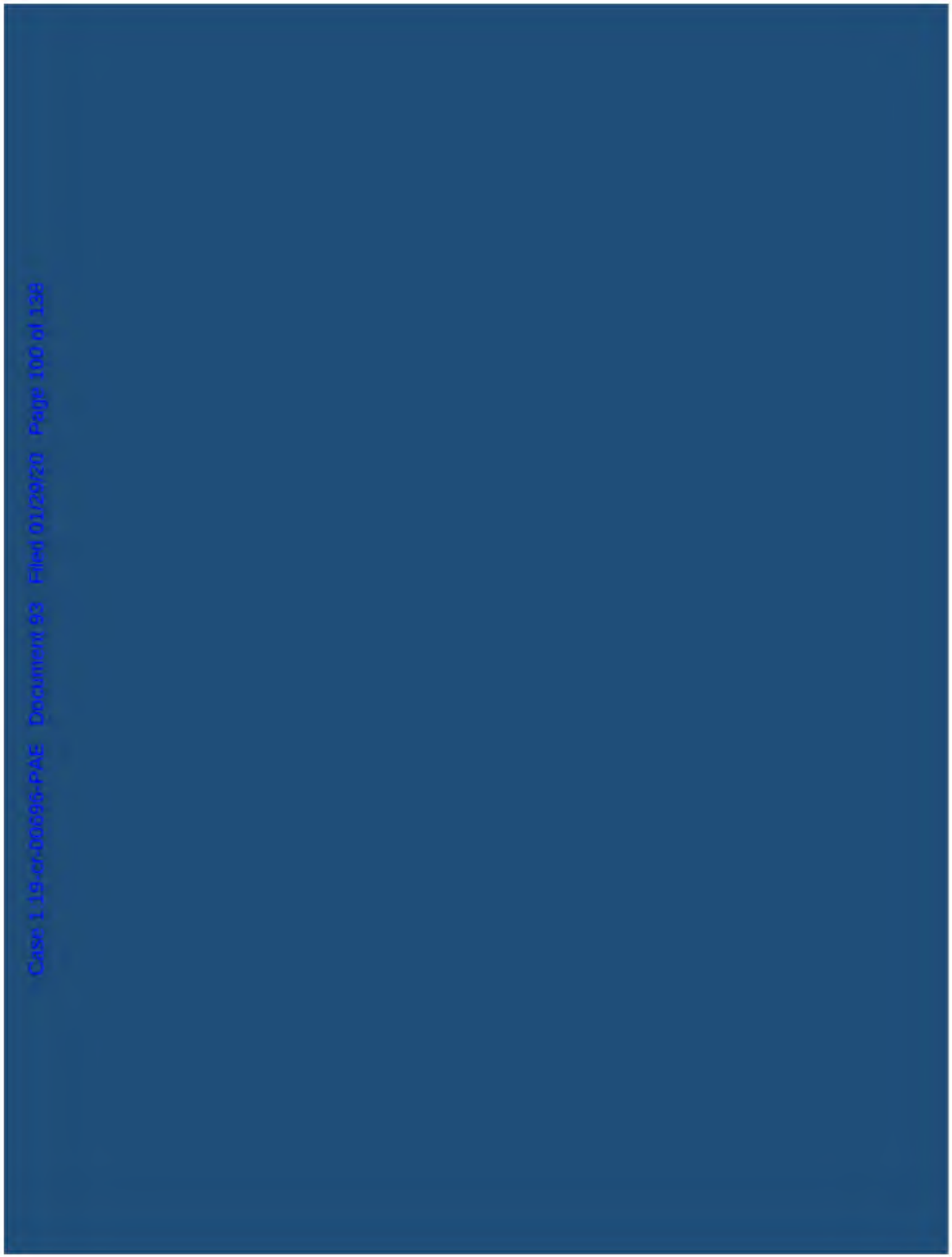
_____ Foreperson	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

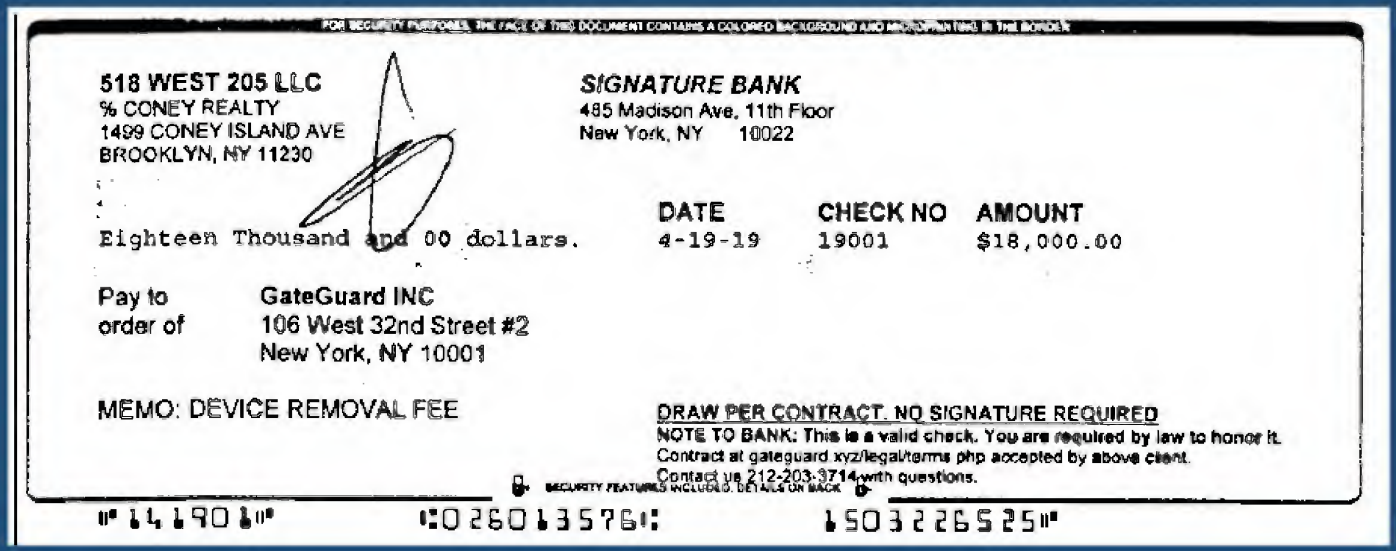
Dated: _____

EXHIBIT 7

United States v. *Ari Teman*

19 Cr. 696 (PAE)


Case 1:19-cr-00696-PAE Document 93 Filed 01/29/20 Page 100 of 138



FOR SECURITY PURPOSES, THE FACE OF THIS DOCUMENT CONTAINS A COLORED BACKGROUND AND MICROPRINTING IN THE BORDER.

518 WEST 205 LLC
% CONEY REALTY
1499 CONEY ISLAND AVE
BROOKLYN, NY 11230

SIGNATURE BANK
485 Madison Ave, 11th Floor
New York, NY 10022

Eighteen Thousand and 00 dollars.

DATE	CHECK NO	AMOUNT
4-19-19	19001	$18,000.00

Pay to order of: GateGuard INC
106 West 32nd Street #2
New York, NY 10001

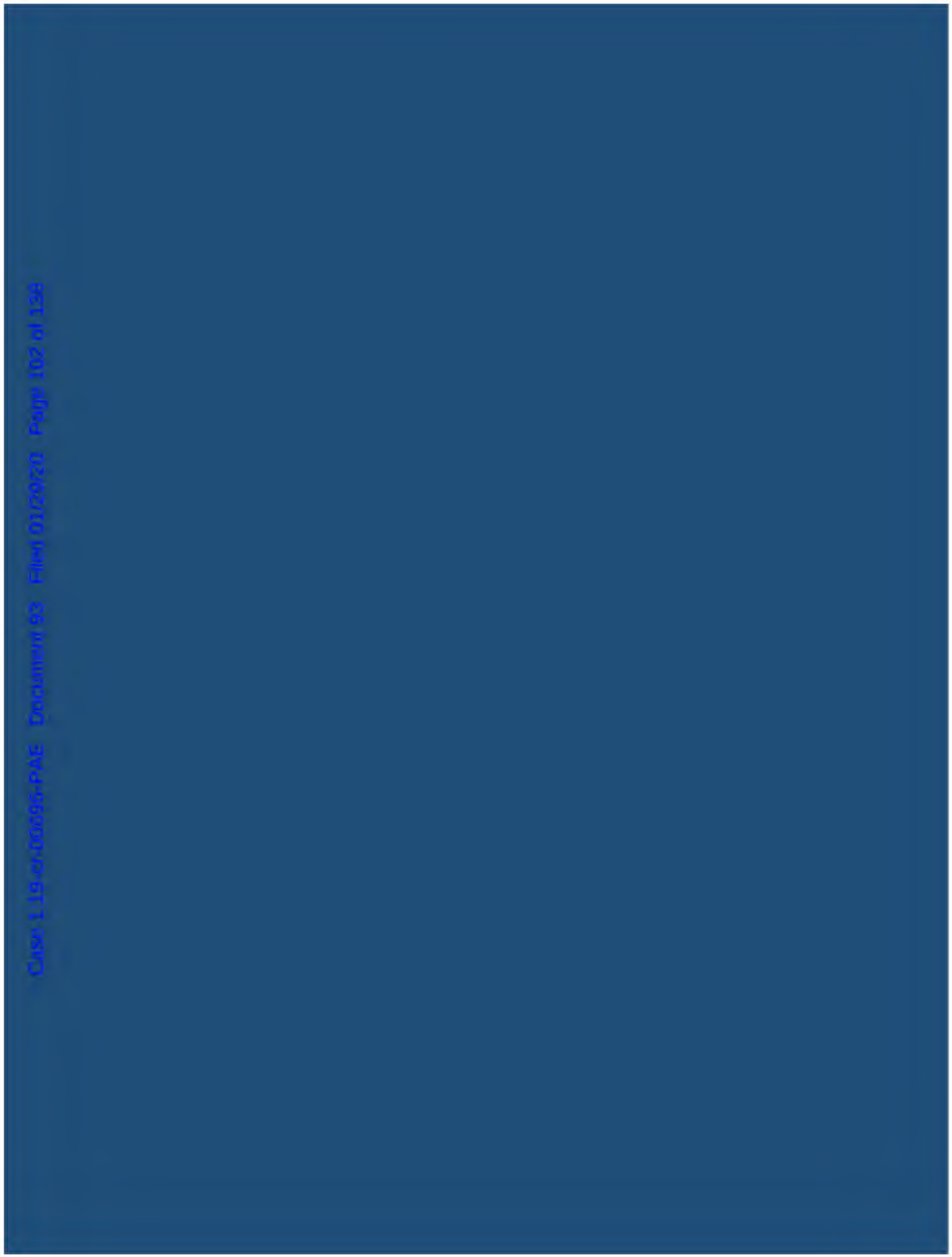
MEMO: DEVICE REMOVAL FEE

DRAW PER CONTRACT. NO SIGNATURE REQUIRED
NOTE TO BANK: This is a valid check. You are required by law to honor it.
Contract at gateguard.xyz/legal/terms.php accepted by above client.
Contact us 212-203-3714 with questions.

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

⑈ 14190 ⑈ ⑆026013576⑆ 1503226525⑈

GX 203, pp. 2


Case 1:19-cr-00696-PAE Document 93 Filed 01/29/20 Page 102 of 138

Criminal Intent

1. Customers Never Gave Permission

Testimony of Elie Gabay

Q. At any point did Mr. Teman ever ask permission to pay himself by issuing checks from Coney's bank accounts?

A. No.

Q. And if he had asked your permission to do that, to write checks from your accounts to himself, what would you have said?

A. I would have said no.

(Tr. 355:21 – 356:5)

Testimony of Joseph Soleimani

Q. And what did he ever tell you during those conversations about his authority to draw checks on behalf of those entities?
A. He never mentioned anything.
Q. If he had mentioned them, would that have stuck out to you?
A. Yes.
Q. And what would your reaction have been if you had heard about them?
A. I would have denied it.
Q. What do you mean, denied it?
A. Denied his authority to draw any checks out of my account.

(Tr. 568:14–23)

Testimony of Bonnie Soon-Osberger

Q. [Y]ou testified previously that you never saw a provision about -- you did not see a provision about allowing him to draw checks from your account.

A. That's true.

Q. If you had seen that, would that have been something you would have included in this message?

A. Absolutely. I just don't have authority to allow people to write checks; I don't have authority for that, so, yes.

. . .

Q. Did you authorize Mr. Teman to deposit this check?

A. Absolutely not.

Tr. 430:4–11, 441:10-11

Testimony of Gina Hom

Q. Did you ask the board first whether this was authorized?

A. No.

Q. Why Not?

A. Because the only people that were authorized to issue any payments on this would have been myself or Jackeline. And neither one of us had done it.

(Tr. 475:22 – 476:2)

Criminal Intent

1. Customers Never Gave Permission

Testimony of Elie Gabay

Q. If he had asked you for a form authorizing withdrawals from your bank account, how would you have reacted?

A. He did ask and we said no.

Q. Why did you say no?

A. Because it's not the way we operate. We only do things by invoice where we issue the check. He had requested that we entered an order using [ACH], and we asked him for invoices only.

(Tr. 365:19-25)

Criminal Intent

1. Customers Never Gave Permission

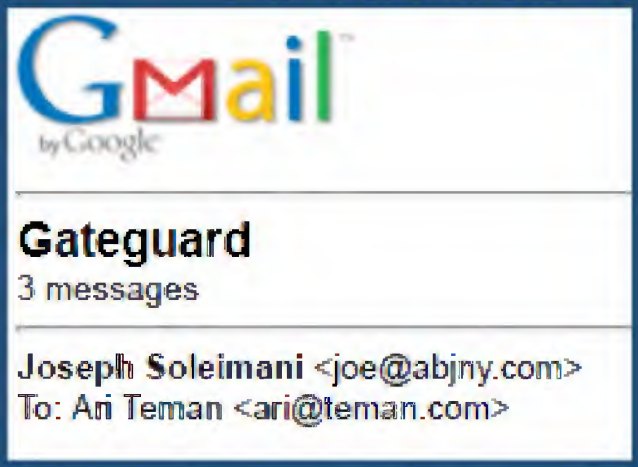
Criminal Intent

1. Customers Never Gave Permission

2. Defendant Tried and Failed, then Tried Again

Criminal Intent

1. Customers Never Gave Permission
2. Defendant Tried and Failed, then Tried Again
3. Defendant Never Invoiced Customers


Gmail
by Google
Gateguard
3 messages
Joseph Soleimani <joe@abjny.com>
To: Ari Teman <ari@teman.com>
Ari,
Can you please send me the invoices which you are claiming we owe you?
Not sure why we owe you money but I'm glad to look into it.

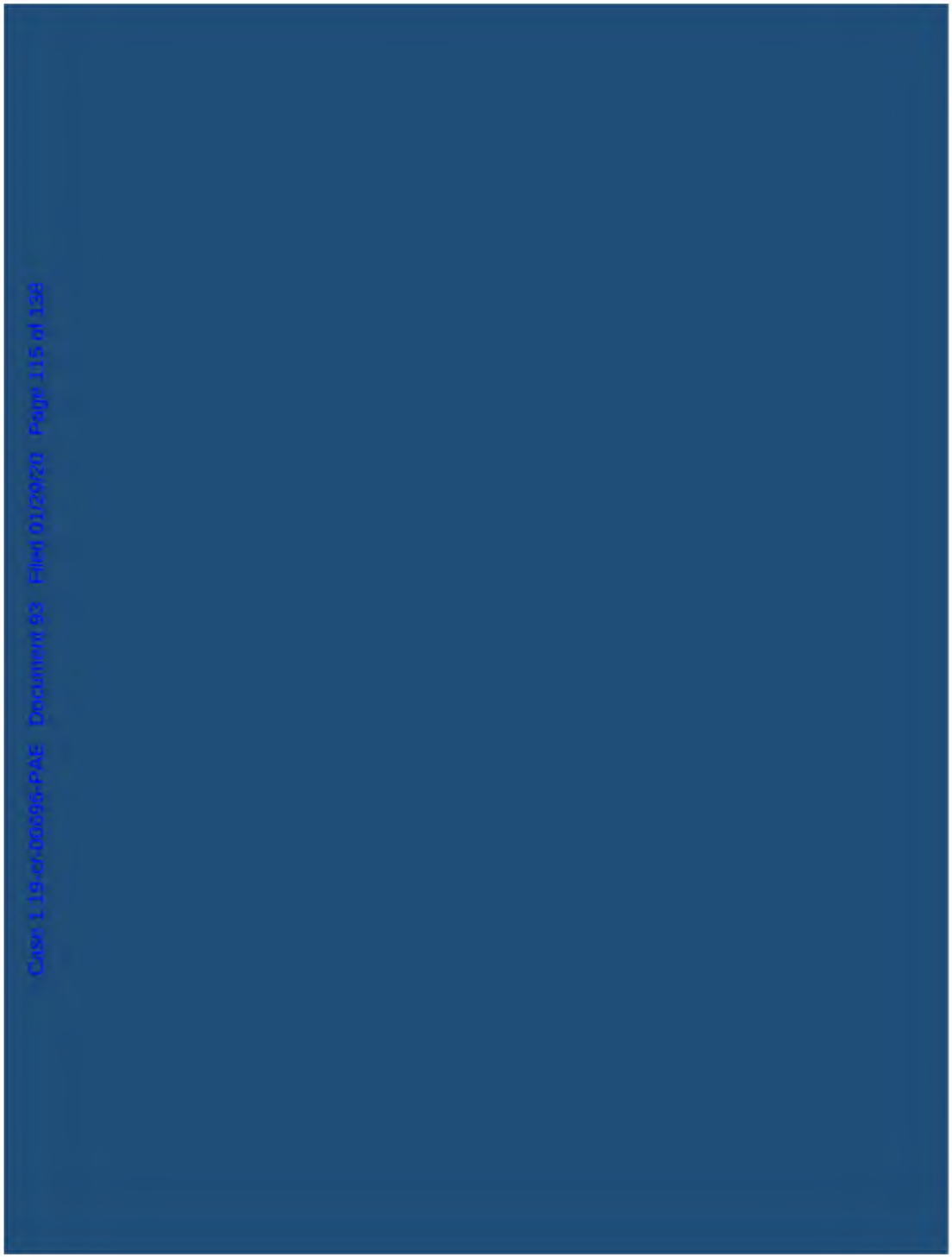
GX 405, pp. 1

Item	Description	Unit Cost	Quantity	Line Total
GateGuard V1 Panel		$14,999.00	1	$14,999.00
Paid		$-3,500.00		$0.00
Installation (Wired, basement, v1)	Included	$1,499.00	1	$1,499.00
Monthly Service	1st Year Upfront	$149.00	12	$1,788.00

Client failed to keep their end of the deal ordering 10 devices (then increased to 20). That pre-sale period is now over. Therefore, full price for GateGuard v1 and installation is as stated here and payment is due immediately. Any further discussion will only be had after full payment for our product and services is made. Device is disabled until payment is made. (Note: Payment will be due plus penalty for removal if removed.) - Ari

Subtotal	$18,286.00
Paid To Date	$0.00
Balance Due	$18,286.00

GX 417, pp. 9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Criminal Intent

1. Customers Never Gave Permission
2. Defendant Tried and Failed, then Tried Again
3. Defendant Never Invoiced Customers

Criminal Intent

1. Customers Never Gave Permission
2. Defendant Tried and Failed, then Tried Again
3. Defendant Never Invoiced Customers
4. Fees Disproportionate to Invoiced Charges

INVOICE

Invoice Number	0027	18 Mercer Equities
Invoice Date	03/26/2018	bsoonosberger@gmail.com
Due Date	03/26/2018	
Balance Due	$3,947.88	

Item	Description	Unit Cost	Quantity	Line Total
GateGuard 2.0 Panel (Cooperator Show Price)		$2,499.00	1	$2,499.00
GateGuard.xyz Panel Installation Surface	Surface Installation	$849.00	1	$849.00
Gold Plan Monitoring	GGxyz Monitoring : Gold Plan (1st year Paid Upfront)	$49.99	12	$599.88

Delivery in 120-150 days from invoice. We can install Version 1 of the device temporarily until then if there delay is two long (2nd installation fee may apply)

Subtotal	$3,947.88
Paid To Date	$0.00
Balance Due	$3,947.88

GX 431, pp. 3

Bill To:	ABJ Properties 100 W. 138th (ABJ LENOX,LLC) Joseph Soleimani joe@ABJny.com

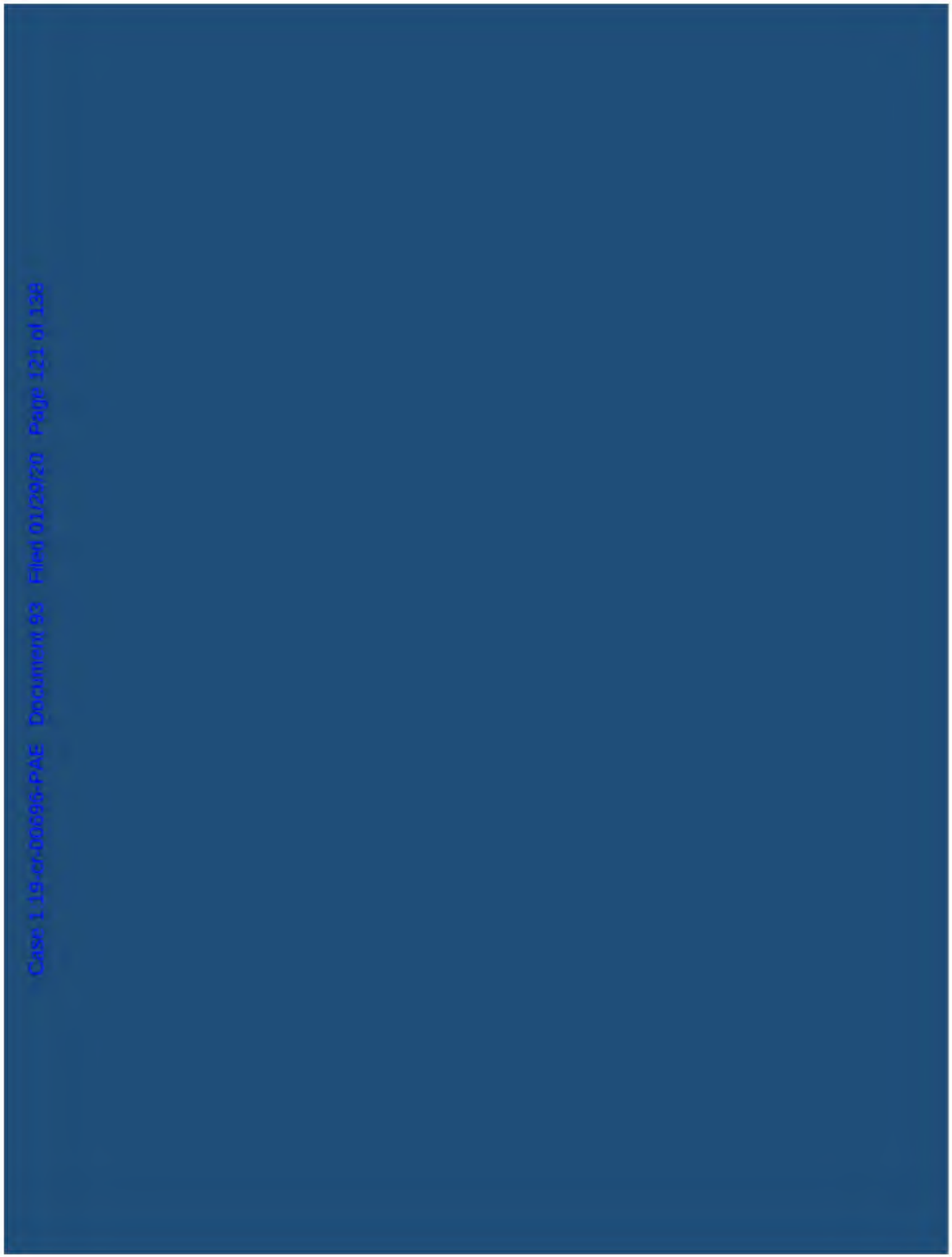
QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
1	GateGuard.xyz Panel	499,00	$499,00
1	Installation	650,00	$650,00
6	Monthly Service (6 months upfront)	99,00	$594,00

SUBTOTAL	$1.743,00
TAX RATE	EXEMPT
SALES TAX	
SHIPPING & HANDLING	
TOTAL	**$1.743,00**

GX 409A

Criminal Intent

1. Customers Never Gave Permission
2. Defendant Tried and Failed, then Tried Again
3. Defendant Never Invoiced Customers
4. Fees Disproportionate to Invoiced Charges
5. Defendant Knew How to Lawfully Recover Money


Case 1:19-cr-00696-PAE Document 93 Filed 01/29/20 Page 121 of 138

518 WEST 205 LLC
% CONEY REALTY
1499 CONEY ISLAND AVE
BROOKLYN, NY 11230

SIGNATURE BANK
485 Madison Ave, 11th Floor
New York, NY 10022

	DATE	CHECK NO	AMOUNT
Eighteen Thousand and 00 dollars.	3-28-19	001	$18,000.00

Pay to order of **GateGuard INC**
106 West 32nd Street #2
New York, NY 10001

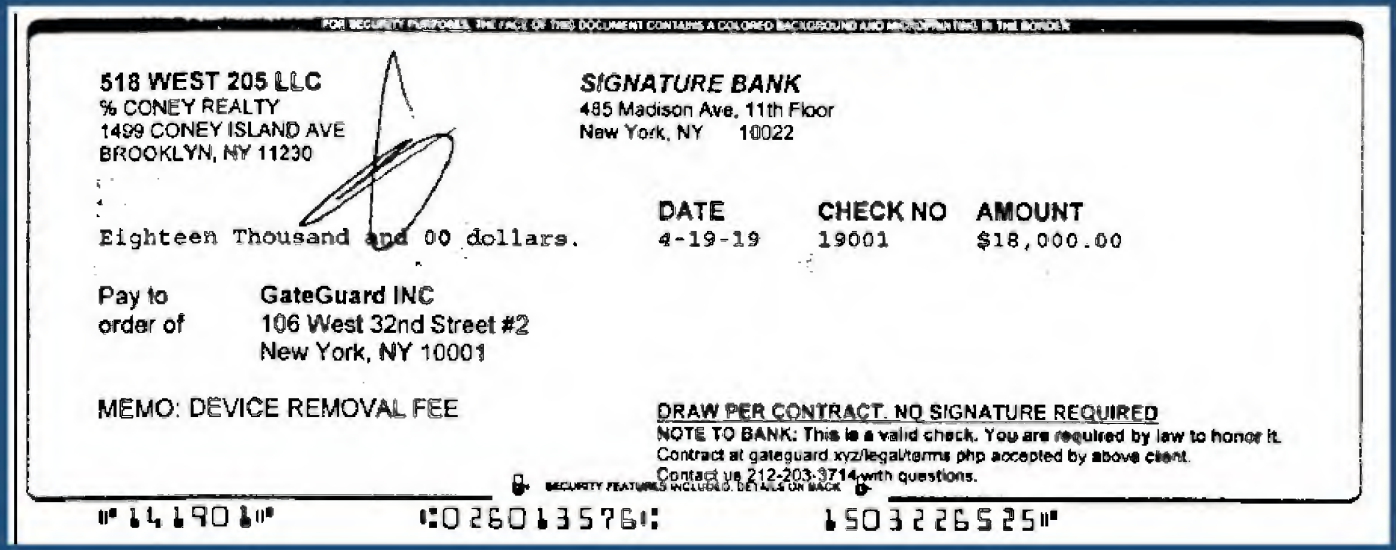
MEMO: DEVICE REMOVAL FEE

DRAW PER CONTRACT, NO SIGNATURE REQUIRED

SECURITY FEATURES INCLUDED DETAILS ON BACK

⑈00000 1⑈ ⑆0 260 135 76⑆ 1503 226 525⑈

GX 201, pp. 1



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518 WEST 205 LLC
% CONEY REALTY
1499 CONEY ISLAND AVE
BROOKLYN, NY 11230

SIGNATURE BANK
485 Madison Ave, 11th Floor
New York, NY 10022

Eighteen Thousand and 00 dollars.

DATE	CHECK NO	AMOUNT
4-19-19	19001	$18,000.00

Pay to order of: GateGuard INC
106 West 32nd Street #2
New York, NY 10001

MEMO: DEVICE REMOVAL FEE

DRAW PER CONTRACT. NO SIGNATURE REQUIRED
NOTE TO BANK: This is a valid check. You are required by law to honor it.
Contract at gateguard.xyz/legal/terms.php accepted by above client.
Contact us 212-203-3714 with questions.

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

⑈ 14190 ⑈ ⑆026013576⑆ 1503226525⑈

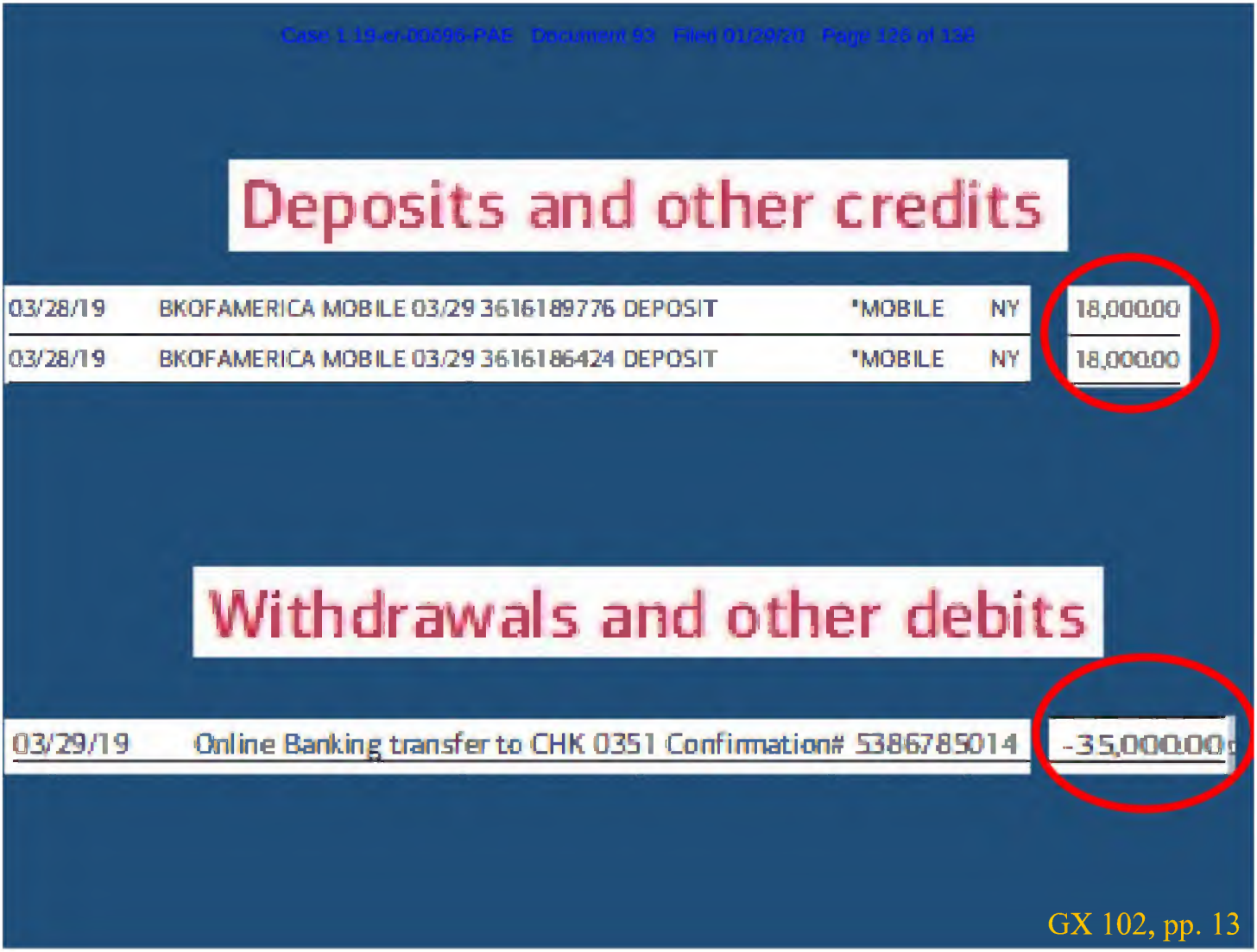
GX 203, pp. 2

Criminal Intent

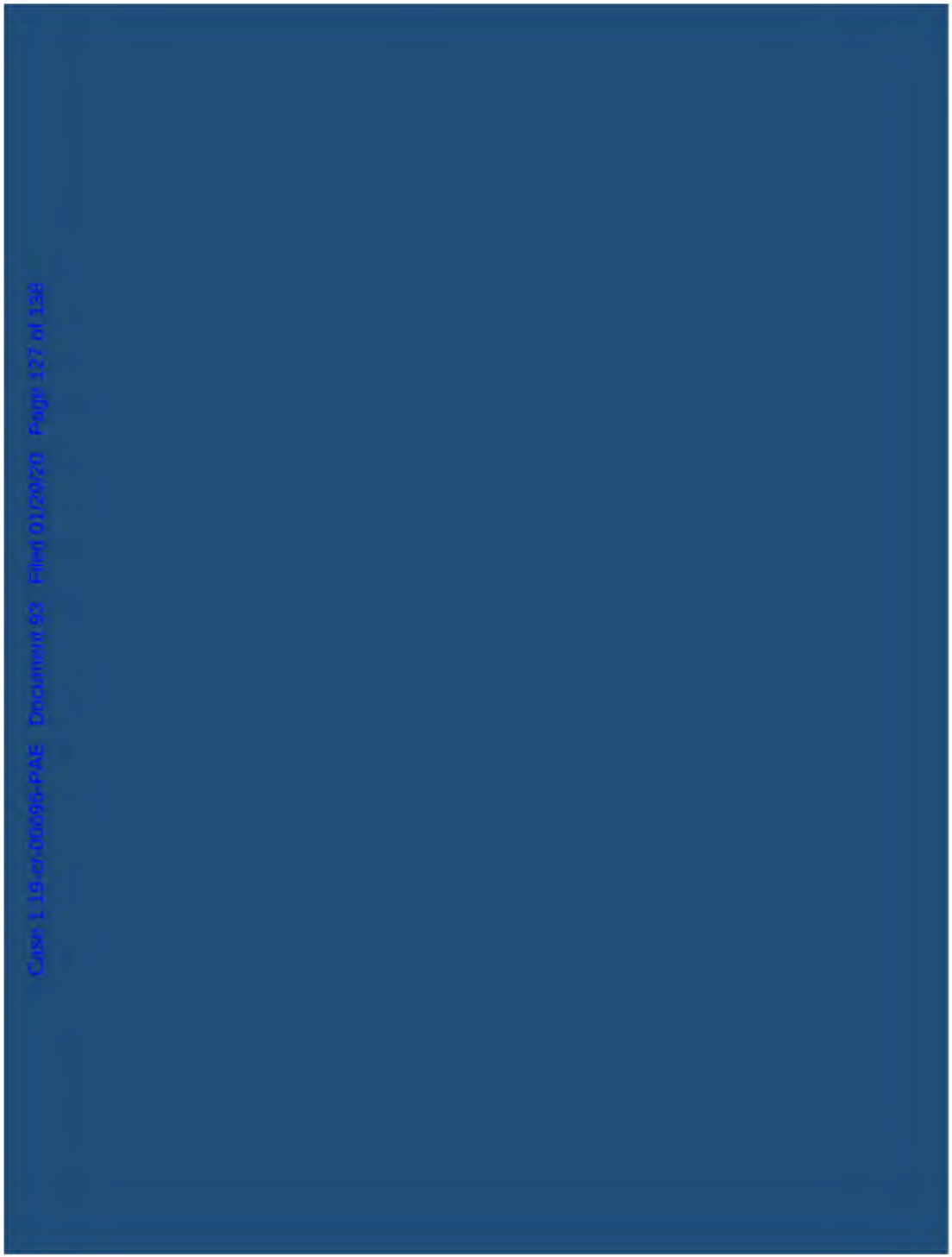
1. Customers Never Gave Permission
2. Defendant Tried and Failed, then Tried Again
3. Defendant Never Invoiced Customers
4. Fees Disproportionate to Invoiced Charges
5. Defendant Knew How to Lawfully Recover Money
6. The Checks Themselves

Criminal Intent

1. Customers Never Gave Permission
2. Defendant Tried and Failed, then Tried Again
3. Defendant Never Invoiced Customers
4. Fees Disproportionate to Invoiced Charges
5. Defendant Knew How to Lawfully Recover Money
6. The Checks Themselves
7. Defendant Cashed April 2019 Checks Right Before Passover



GX 102, pp. 13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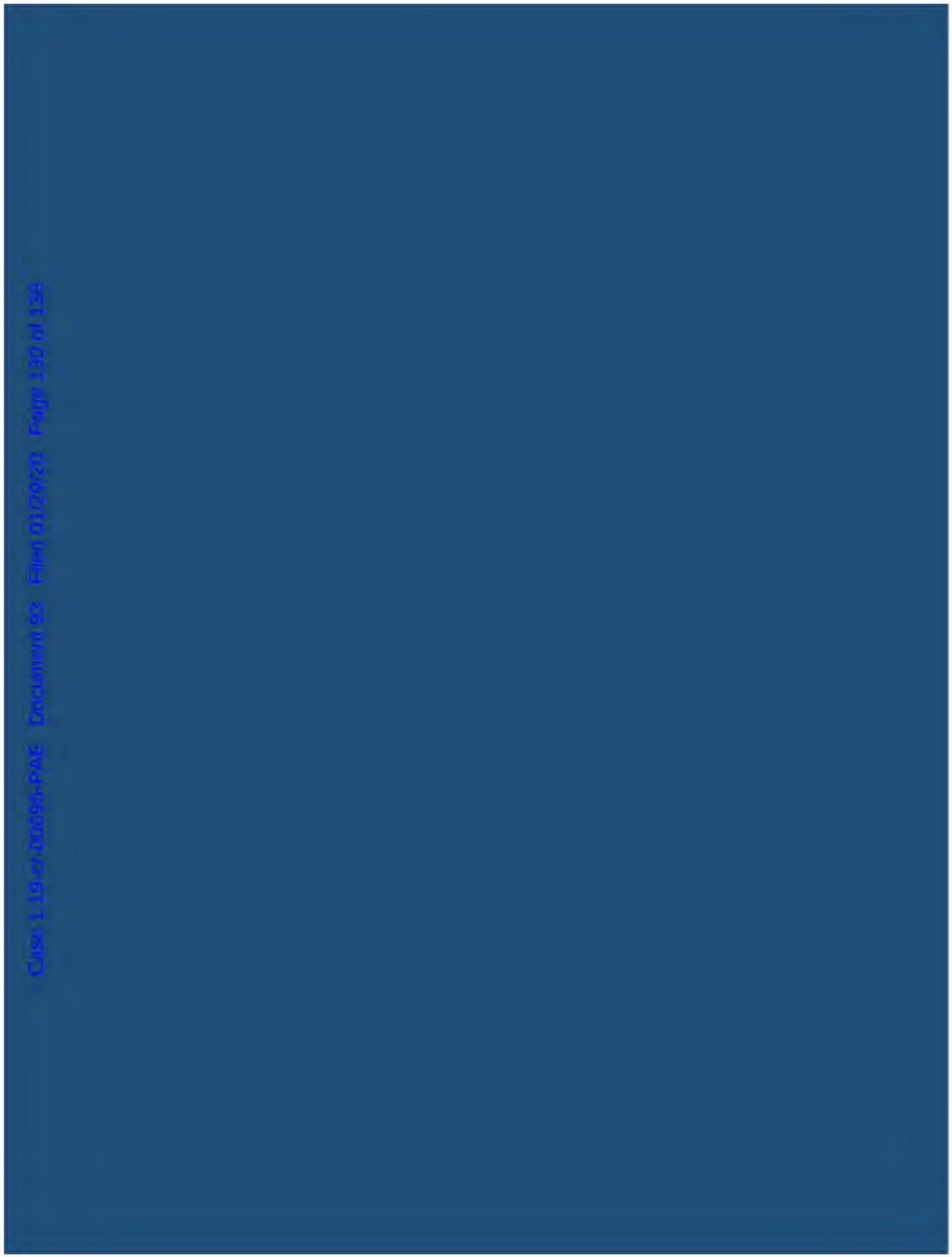
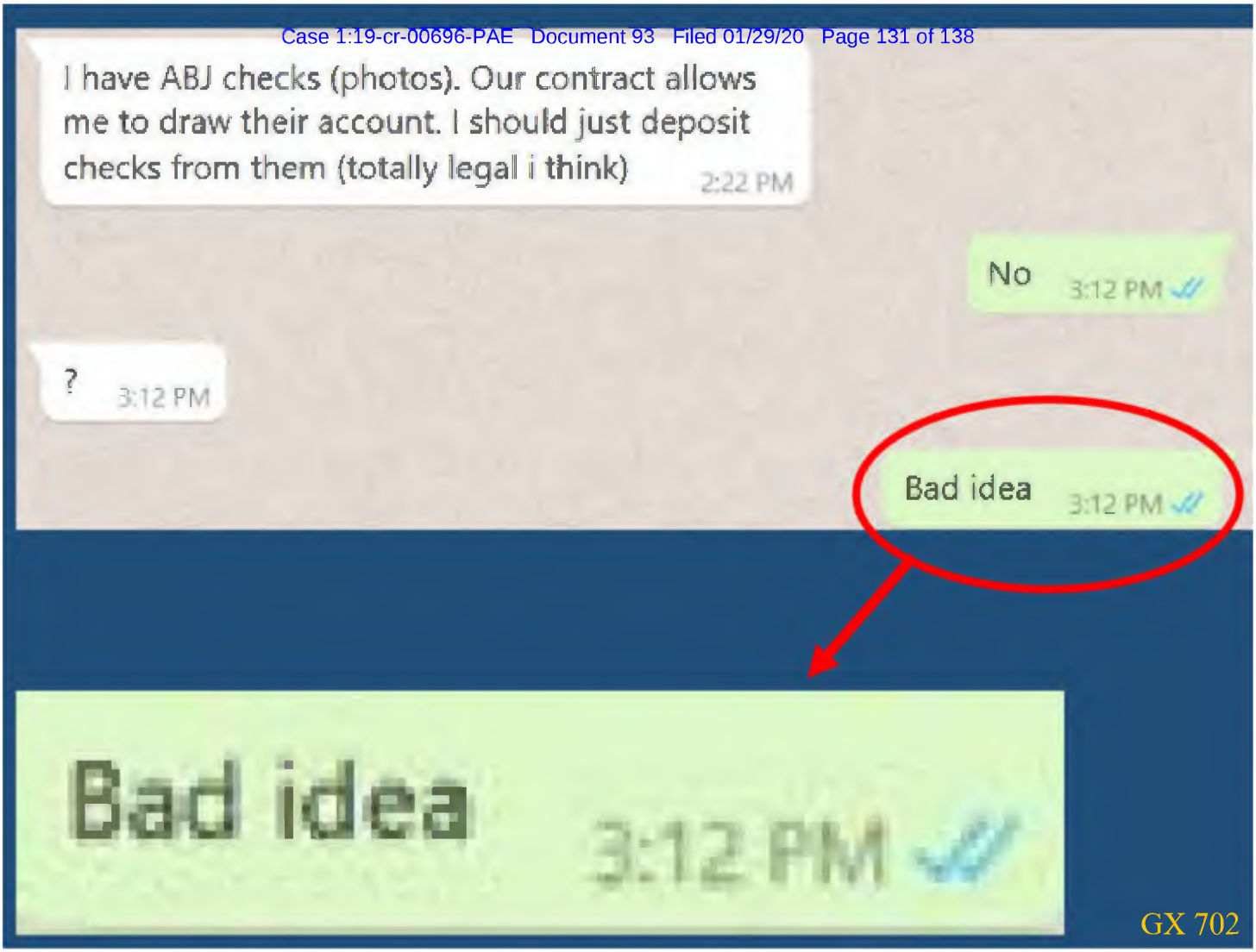
CSTMR_NM	Method_of	PST_AM	LDGR_BL_AM	PST_DT	EV_TRAN_DE
GATEGUARD, INC.	Withdraw	$ 3,600.00	$ 10,167.12	2019 04 26	Online Banking transfer to CHK 5580
GATEGUARD, INC	Withdraw	$ 225,000.00	10,167.12	2019-04-26	Online Banking transfer to CHK 0351
GATEGUARD, INC	Withdraw	$ 33,000.00	238,767.12	2019-04-24	RETURN ITEM CHARGEBACK
GATEGUARD, INC	Withdraw	$ 36.00	238,767.12	2019-04-24	RETURNED ITEM CHARGEBACK FEE
GATEGUARD, INC	Deposit	$ 4,096.00	271,803.12	2019-04-19	BKOFAMERICA ATM 04/19 #000005703 DEPOSIT
GATEGUARD, INC.	Deposit	$ 297,000.00	$ 271,803.12	2019-04-19	Counter Credit
GATEGUARD, INC.	Deposit	$ 76.20	$ (29,292.88)	2019-04-15	CHECKCARD 0412 AMZN MKTP US AMZN.COM/B

GX 113,
tab 483067038085

Criminal Intent

1. Customers Never Gave Permission
2. Defendant Tried and Failed, then Tried Again
3. Defendant Never Invoiced Customers
4. Fees Disproportionate to Invoiced Charges
5. Defendant Knew How to Lawfully Recover Money
6. The Checks Themselves
7. Defendant Cashed April 2019 Checks Right Before Passover
8. Follow the Money


Case 1:19-cr-00696-PAE Document 93 Filed 01/29/20 Page 130 of 138


I have ABJ checks (photos). Our contract allows me to draw their account. I should just deposit checks from them (totally legal i think)
2:22 PM
No
3:12 PM
?
3:12 PM
Bad idea
3:12 PM
Bad idea
3:12 PM
GX 702

Why? They entered into a contract allowing us to draw from their accounts 3:14 PM

so we're not breaking any law 3:14 PM

What can they say? "We owed this guy money, he took it, and he had permission to do so, but we want it back so... ?" 3:19 PM

there's nothing to say 3:19 PM

Because they are likely to call police. And you will be arrested. And have a criminal case to deal with. And then you can start explaining about your contract and 'not breaking any laws' 3:52 PM

GX 702

My opinion is that you are >50% likely to be arrested for the activities you propose. How you choose to proceed is up to you 4:00 PM

You asked my opinion. I gave it. Maybe you're right. Maybe they'll just throw up their hands and say "oh well, we tried to stiff him but Teman outsmarted us. Too bad. Have fun ari, don't spend it all in one place!" 3:58 PM

GX 702

Not sure I follow but this sounds bad 6:42 PM

Our contract states explicitly if you remove devices there's an $18K fee, and we can draw your account, again outright saying we can print a check and draw your account (a bank draw -- very common in real estate). Bank of America put a hold on 2 checks. It's legal, sketchy but legal, but I'm more concerned about getting the cash since we need to operate 6:44 PM

[redacted]

Understood. I don't know all the ins and outs of this but sounds like a bad idea. I suggest you provide them with advanced, explicit notification of the charge, amout, and specific basis in the agreement for doing so. 7:01 PM

If you are hitting their accounts out of the blue, I expect this will become a criminal matter sooner or later 7:03 PM

GX 704

I've already told you I think it's a bad idea. You've been back and forth with abj several times now. Your 'threats' carry little weight at this point and they have indicated they don't believe they owe you $. If you hit their accounts I think 50/50 they call cops. If I was advising them that's probably what I would tell them to do

7:17 AM

GX 728

Honestly, I don't know anything about this stuff. But there are serious state and fed. regulations on this. You claim that your contract allows you to debit their accounts even after they explicitly protest. I'm just not sure it's that simple

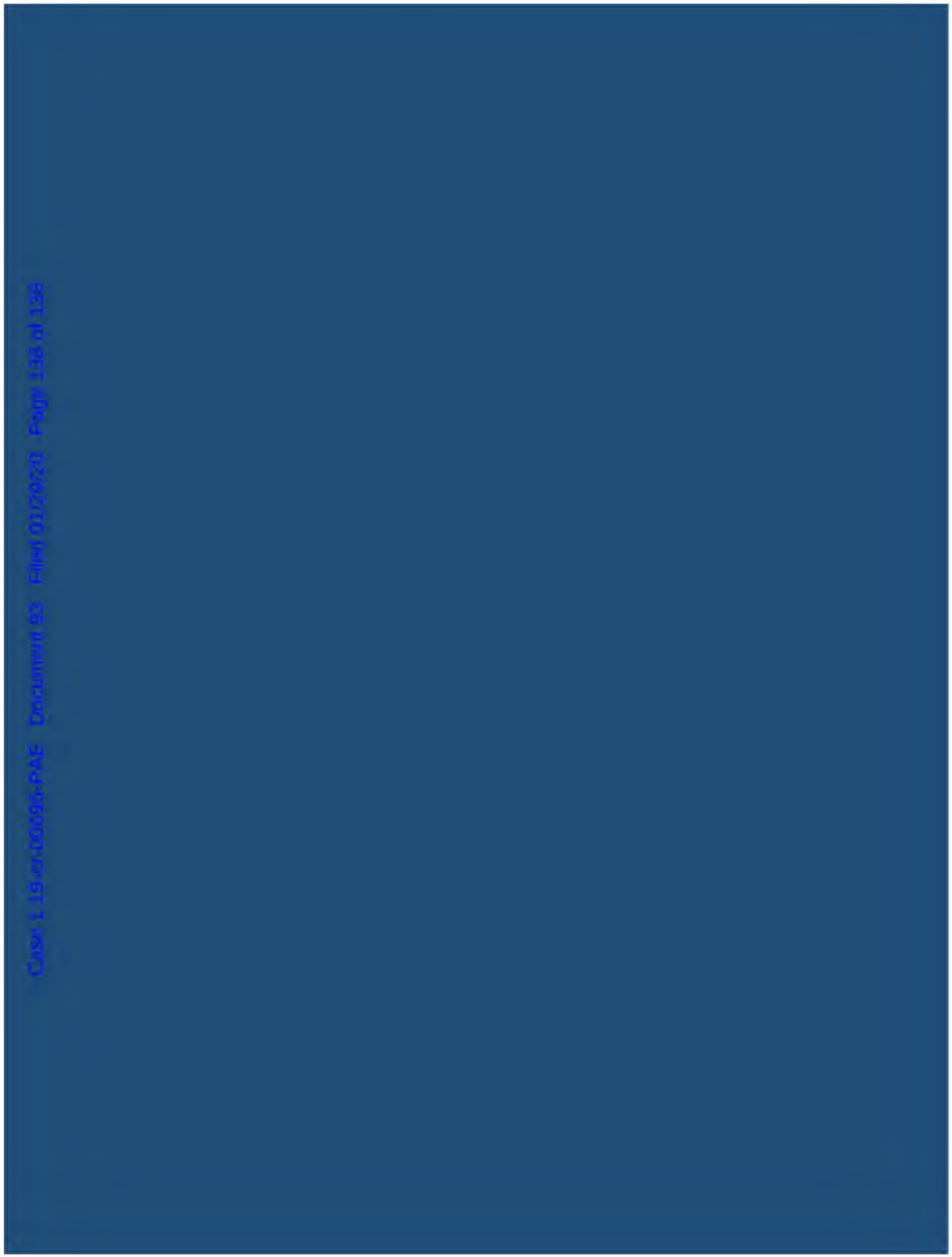
7:09 AM

And it also may be (again... speaking out of ignorance...) a clear violation of some federal banking regulation. In which case your 'simple, can't miss idea' is now a federal crime

7:11 AM

GX 729

Count	Charge	Deposit Date	Customers
1	Bank Fraud	April 2019	Gabay, Soleimani
2	Bank Fraud	March 2019	Gabay, Soon-Osberger
3	Wire Fraud	April 2019	Gabay, Soleimani
4	Wire Fraud	March 2019	Gabay, Soon-Osberger


Case 1:19-cr-00696-PAE Document 93 Filed 01/29/20 Page 138 of 139

A-1437

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 1:19-CR-696-PAE**
	)	
ARI TEMAN,	)	
	)	
Defendant.	)	

DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL OR, IN THE ALTERNATIVE, MOTION FOR NEW TRIAL

Defendant Ari Teman ("Teman"), by and through undersigned counsel, Alan Dershowitz[1], Justin Gelfand, and Joseph DiRuzzo, respectfully moves this Court to enter a judgment of acquittal pursuant to Federal Rule of Criminal Procedure ("Rule") 29(c). In the alternative, Teman moves this Court to grant him a new trial pursuant to Rule 33.

I. Relevant Background

Teman proceeded to trial on a second superseding indictment charging him with two counts of bank fraud and two counts of wire fraud. (Doc. 55). Each count expressly alleged that Teman "deposited counterfeit checks." (*Id.*). Counts One and Three allege that Teman deposited "counterfeit checks" in April 2019 at a Bank of America branch in the Southern District of Florida. (*See id.*). Counts Two and Four allege that Teman deposited "counterfeit checks" by remote deposit in March 2019. (*See id.*).

[1] Mr. Dershowitz is of counsel to Teman and will seek *pro hac vice* admission in this case.

Prior to trial, Teman provided notice pursuant to Federal Rule of Criminal Procedure 16(b)(1)(C) that he intended to call J. Benjamin Davis ("Davis") as an expert witness. (Doc. 74-1). The Government moved *in limine* to preclude Davis's testimony, asserting three grounds in support: relevance; usurping the Court's role; and lack of reliability. (*See* Doc. 74). Teman opposed the Government's motion, explaining:

> One of Teman's core theories of defense is that the checks at issue were valid remotely created checks ("RCCs"). The relevant bank records expressly include the term "RCCs," the checks at issue were processed by the bank as "RCCs," and the defense anticipates the evidence will show that Teman knew what an RCC was before the incidents alleged in the indictment occurred.

(Doc. 77 at 2). Importantly, and in conjunction with Teman's Rule 29(c) motion filed concurrently, Davis's testimony was critical "[b]ecause the checks at issue were RCCs, the checks at issue were not counterfeit checks and were not processed as counterfeit checks." (Doc. 77 at 3).

At the January 10, 2020 pretrial conference, this Court entered an *ore tenus* order granting the Government's motion *in limine* and precluded Teman from calling Davis at trial.

This case was tried before a jury commencing on January 22, 2020. Teman invoked the "rule of sequestration" under Federal Rule of Evidence 615, which the Court acknowledged. (*See* TR. at 27). On the morning of January 24, 2020, Teman raised the issue of a violation of Rule 615. (TR. at 537). Specifically, on January 23, 2020, this Court adjourned for the day while a Government witness—Soleimani—was on the stand in the middle of his direct examination. Soleimani was *the* witness who initially made a criminal complaint against Teman in connection with this case. Prior to taking the stand the next morning, Soleimani was contacted by Government counsel to discuss his testimony. Remarkably, counsel for the Government asserted that "it was appropriate for us to have a conversation with [Soleimani] about some facts that we thought might

come up in the trial, and we did it in part so that we could give the Court and the parties some more information about possible prior inconsistent statements." (TR. at 538). The inconsistent statement addressed the "delta" between the $180,000 reported as lost/stolen/unauthorized versus the full value of the chargeback (*i.e.*, $190,000). Counsel for Teman argued that

> the delta would lead us into grounds that there is the possibility that some of the charges were actually authorized, which then in turn at least allows us to make the argument that perhaps all of these charges in fact were authorized. That vein of cross-examination, that line, you know, was appropriately disclosed to your Honor, but at the same time the government should not have disclosed that to the witness.

(TR. at 541). Ultimately, this Court rejected Teman's contention that the Government's disclosure of what happened on the record and outside the witness's presence constituted a violation of Rule 615. (TR. at 539).

At the close of the Government's case, Teman timely moved for a judgment of acquittal pursuant to Rule 29. Teman again timely moved for a judgment of acquittal at the close of the defense case. In denying Teman's motion for judgment of acquittal, this Court expressly stated, "[i]n the event of a guilty verdict on one or more counts, I would be happy to reassess a new post-trial Rule 29(c) motion with respect to venue on that point, a thoughtfully briefed motion." (TR. at 724).

The jury then returned a guilty verdict as to all counts on January 29, 2020. This Court granted Teman's *ore tenus* motion to extend the time to file his Rule 29 and Rule 33 motion to February 26, 2020. (*See* TR. at 1136). Accordingly, this motion is timely.

II. This Court Should Enter a Judgment of Acquittal on All Counts

Rule 29(c)(2) provides, "[i]f the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal." To prevail, Teman must demonstrate, "considering all of the

evidence, direct and circumstantial, that 'no rational trier of fact could have found the defendant guilty beyond a reasonable doubt.'" *United States v. Eppolito*, 534 F.3d 25, 45 (2d Cir. 2008) (quoting *United States v. Jackson*, 335 F.3d 170, 180 (2d Cir. 2003)). In conducting its independent analysis, this Court "must view the evidence in the light most favorable to the government, crediting every inference that could have been drawn in the government's favor, and deferring to the jury's assessment of witness credibility and its assessment of the weight of the evidence." *United States v. Coplan*, 703 F.3d 46, 62 (2d Cir. 2012) (quoting *United States v. Chavez*, 549 F.3d 119, 124 (2d Cir. 2008)).

However, in doing so, this Court has the responsibility of protecting Teman's Fifth Amendment rights. *See, e.g., United States v. Valle*, 807 F.3d 508, 513-15 (2d Cir. 2015) (If courts "are to be faithful to the constitutional requirement that no person may be convicted unless the Government has proven guilt beyond a reasonable doubt, we must take seriously our obligation to assess the record to determine . . . whether a jury could reasonably find guilt beyond a reasonable doubt") (alteration in original) (internal quotations omitted). As the Second Circuit has repeatedly emphasized, this means that

> specious inferences are not indulged, because it would not satisfy the Constitution to have a jury determine that the defendant is probably guilty. If the evidence viewed in the light most favorable to the prosecution gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence, then a reasonable jury must necessarily entertain a reasonable doubt.

Id. (quoting *United States v. Lorenzo*, 534 F.3d 153, 159 (2d Cir. 2008)).